S. HRG. 103–224

THE CHILD SAFETY PROTECTION ACT AND THE BUCKET DROWNING PREVENTION ACT

Y 4. C 73/7: S. HRG. 103-224

The Child Safety Protection Act and...

HEARING

BEFORE THE

SUBCOMMITTEE ON CONSUMER

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED THIRD CONGRESS

FIRST SESSION

JULY 1, 1993

Printed for the use of the Committee on Commerce, Science, and Transportation

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S. 680, THE CHILD SAFETY PROTECTION ACT; AND S. 799, THE BUCKET DROWNING PREVENTION ACT

THURSDAY, JULY 1, 1993

U.S. SENATE,
SUBCOMMITTEE ON CONSUMER OF THE
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:05 a.m., in room SR–253 of the Russell Senate Office Building, Hon. Richard H. Bryan (chairman of the subcommittee) presiding.

Staff members assigned to this hearing: Claudia A. Simons, staff counsel, and Moses Boyd, senior staff counsel; and Sherman Joyce, minority staff counsel.

OPENING STATEMENT OF SENATOR BRYAN

Senator BRYAN. The subcommittee hearing will come to order. Mr. Chairman, your comments, please.

OPENING STATEMENT OF SENATOR HOLLINGS

The CHAIRMAN. Today the Consumer Subcommittee will address two pieces of legislation intended to promote child safety by reducing the number of accidental injuries and deaths to children.

According to the Consumer Product Safety Commission, between January 1991 and September 30, 1992, 31 children died from toy-related causes, with almost one-half of that number, 14, from choking. The CPSC estimates that in 1991 alone there were 163,000 toy-related injuries serious enough to be treated in hospital emergency rooms, with almost one-half of the injuries to children under 5 years of age. The CPSC also reports that each year there are approximately 1,200 bicycle-related deaths, and that head trauma is responsible for 70 percent of the deaths. Finally, the CPSC staff estimates that each year 50 toddlers fatally drown in 5-gallon-type buckets, and 130 more are taken to hospital emergency rooms for treatment.

The Child Safety Protection Act, S. 680, was introduced by Senator Gorton and requires warning labels on certain toys that may present a choking hazard to children under 3 years of age. In addition, the bill requires the CPSC to issue safety standards for bicycle helmets. S. 799, introduced by Senator Metzenbaum, directs the CPSC to require warning labels on 5-gallon-type buckets to alert parents of the potential drowning hazards which these buckets may

pose for their toddlers, and also requires the CPSC to develop a performance standard to redesign the buckets to make them safer.

I commend the sponsors of these two important child safety measures for their leadership, and look forward to hearing the testimony of our witnesses this morning.

Thank you, Mr. Chairman.

Senator BRYAN. Thank you, Mr. Chairman. Our distinguished ranking member and sponsor of one of the pieces of legislation which we are hearing today has advised me that he has a very, very important matter that was unscheduled, of vital interest to his own State, and it would be my pleasure now to defer to him for whatever appropriate opening statement he would care to make.

OPENING STATEMENT OF SENATOR GORTON

Senator GORTON. Mr. Chairman, that is typical of your courtesy during the several years that you have chaired this subcommittee and I have served as the ranking Republican. I cannot think of any serious disagreement which we have had. Almost everything which has been produced by this subcommittee has been bipartisan in nature, and that is, of course, a very, very real tribute to you and your breadth of mind and character, and perhaps to our joint background in our respective States.

I particularly appreciate your willingness to cosponsor this bill, along with Senator Rockefeller, and for scheduling this hearing I am chagrined to have to apologize at being required to leave, but in 10 minutes President Clinton is going to announce what, to this Senator, will be a most disappointing proposal with respect to the forest crisis in the Pacific Northwest. That is something that I have to attend and respond to.

But the subject of child safety is a vital one. Senator Dodd is here. He has been a long-time leader in this field. I believe that Senator Metzenbaum will be here shortly as well. He is a tremendously articulate and dedicated individual on this and a wide range of fields, and his leadership will be greatly missed in many of these subject matter areas in the next Congress.

And in a sense, the person who may be most welcome of all will be Congresswoman Collins, who sponsored this bill and saw to its very prompt passage by the House of Representatives, one of the first bills to that passed the House of Representatives during the course of this Congress. And if imitation is the sincerest form of flattery, I certainly flatter Congresswoman Cardiss Collins because we wrote an identical bill to the one that she has caused to pass through the House of Representatives.

Toys obviously are provided for the pleasure and educational simulation of young children. Nevertheless, we have figures showing that almost 200 children have died from choking on small balls and other small toys in recent years, and that 3,200 children under the age of 6 every year suffer toy-related ingestion or aspiration injuries serious enough to require hospital emergency room treatment.

I was disappointed last year when the Consumer Product Safety Commission rejected staff recommendations to require warning labels. Those warning labels are the subject of this bill. Voluntary la-

bels already appear on some of the toys which would be covered by this legislation, but notification to the parents of the possible dangers is something that I am convinced will save children's lives.

We also have a bicycle helmet provision in this legislation as does Congresswoman Cardiss Collins' legislation. In addition, the provision is included in a bill sponsored by Chairman Bryan and Senator Danforth is already on the Senate calendar. In any event, I look forward not only to this hearing but to action resulting from this hearing. It has obviously created a great deal of interest in the country, in the industry, among safety related organizations, and all of those representatives are welcome here today.

Most of all, once again I want to express my gratitude to you for your interest in this subject and for your generous cooperation when we come up with an idea, just as on almost every occasion on which you have come up with one we have done our best to support it, as well. It has been a great partnership, and I hope it continues for some time to come.

[The prepared statement of Senator Gorton follows:]

PREPARED STATEMENT OF SENATOR GORTON

Mr. Chairman, I appreciate you scheduling this hearing, and also greatly appreciate you and Senator Rockefeller cosponsoring the Child Safety Protection Act. During the five years that you and I have worked together on this subcommittee we have worked in a bipartisan manner and successfully enacted a number of important safety initiatives. I think it is appropriate that the subcommittee now turns its attention to the area of child safety.

I would first like to welcome Senator Metzenbaum, who has had a distinguished career in the area of consumer protection. I would also like to welcome Senator Dodd, who has been a longtime leader in the field of toy safety to the subcommittee. And it is a special pleasure to welcome Congresswoman Collins who sponsored the Child Safety Act in the House. I commend you for your leadership on this issue and for successfully moving this bill so quickly through the House and by such an overwhelmingly large margin. I hope that the Senate will soon duplicate your fine achievement.

Toys are intended to provide pleasure and educational stimulation for young children. The statistics on toy safety, howver, reveal a serious safety problem. According to the Consumer Product Safety Commission (CPSC), between 1980 and 1991, 186 children died from choking on small balls and other toys. In addition, 3,200 children under age six annually suffer toy-related aspiration and ingestion injuries which require treatment in hospital emergency rooms.

Last year, the CPSC rejected staff recommendations to require warning labels on various kinds of toys that present a choking hazard. I strongly disagree with that decision. I believe warning labels as called for in my legislation, would address a very real problem. Voluntary labels that appear on some toys today such as those that state "recommended for children 3 and up" are confusing. Most parents that choose these toys for their children mistakenly believe that the label refers to a child's cognitive ability. The parent purchases the toy believing that their child is developmentally ready to play with the particular toy. Parents need a more clear warning that accurately conveys an important safety measure—that the toy contains a small part that their young child could choke upon. This type of simple, clear warning on toys will save children's lives.

My bill also addresses another safety issue associated with riding a bicycle—an activity enjoyed by children and adults alike. Tragically, 1,200 people die in bicycle-related accidents each year and 400 of them are children. In 1990, almost 400,000 children were treated in hospital emergency rooms for bike injuries. The vast majority of serious injuries and deaths involve trauma to the head—injuries that can be greatly lessened or prevented altogether by the simple act of wearing a well-constructed bike helmet. Many helmets sold in the United States today provide fine protection. Unfortunately, though, all helmets sold in the United States do not meet the same safety standards. Independent testing has shown that even helmets that are affixed with a voluntary sticker may not even meet those voluntary guidelines. That is why we first, must set a strong federal standard that provides adequate protection and second, must have a means to enforce this standard. Consumers deserve

to know that the helmet that they buy is built properly and will perform in an accident. The evidence is overwhelming; bicycle helmets can save riders from serious injury and death.

Finally, Mr. Chairman, I note that the subcommittee is also hearing testimony on Senator Metzenbaum's bill, S. 799 which seeks to address the tragedies involving young children drowning in 5 gallon buckets. I look forward to working with all concerned to find a means to properly alert consumers to this danger.

Again, thank you, Mr. Chairman, for holding this hearing.

Senator BRYAN. Thank you very much, Senator Gorton, for the comments, most generous, and appreciated by the Chair. It is always a pleasure to work with you and your staff. It makes life around here a lot easier when you have this kind of constructive relationship. And your full text will be made a matter of the record of these proceedings.

Let me join with my colleague in welcoming everyone to today's hearings. This morning, the Consumer Subcommittee will discuss two measures designed to make some of our everyday products a little safer for the Nation's children, the Child Safety Protection Act and the Bucket Drowning Prevention Act. I am pleased to be a cosponsor of the Child Safety Protection Act, legislation introduced by Senator Gorton and Senator Rockefeller.

The legislation represents a significant step in our efforts to increase children's safety by reducing the number of toy-related deaths and injuries. Toys, while intended to bring children pleasure, unfortunately can also be responsible for children's deaths and injuries. According to the Consumer Product Safety Commission, at least 31 children have died from toy-related injuries between January 1991 and September 1992, and an estimated 163,000 were injured in 1991 alone.

The primary cause of toy-related deaths is when young children choke on small toy parts—marbles, small balls, and uninflated balloons. Currently, Federal regulations prohibit small toys and toys with small parts from being marketed to children under 3. However, there are no national mandatory warning labels to warn parents of the dangers associated with small toys and toys containing small parts that are intended for use by children over age 3 but are potentially hazardous for children under age 3.

According to a study published June 1991 in the Journal of the American Medical Association, current warning labels may not adequately alert parents to the hazards that small toy parts can pose to children under the age of 3. The study concluded that an explicit label that warned parents and other consumers of these hazards would likely reduce inappropriate toy purchases. I am pleased to note that one of the witnesses this morning is Mr. Steve Teret, one of the coauthors of that study, who will share with this subcommittee the findings of the study in greater detail.

The Child Safety Protection Act provides needed improvements to the existing regulatory framework for warning labels on toys. The legislation directs the CPSC to take specific action to require cautionary labels to protect children under age 3 from the hazards presented by toys, games, small balls, balloons, and marbles intended for use by children over the age of 3.

The Child Safety Protection Act also requires the CPSC to issue safety standards for bicycle helmets, as my distinguished colleague just noted. This provision is identical to a provision in S. 228, the

Children's Bicycle Helmet Safety Act, which I introduced in January of this year along with Senators Danforth and McCain, and which was favorably reported out by this committee on May 25 of this year.

The Bucket Drowning Prevention Act was introduced by Senator Metzenbaum, who has long been a tireless crusader in the struggle to reduce the number of accidental children's deaths and injuries. This legislation requires the CPSC to warn parents of the hidden hazards that 5-gallon-type buckets can present to their children. Hundreds of toddlers have already drowned in these buckets, sometimes with as little as a few inches of water.

Warning labels, however, are no panacea, and they will never substitute for attentive, caring parents. There is no law, no regulation, no Government action, that can be taken that substitutes for parent care. But most parents do care, and they care deeply about their children, and providing them with information about safety is important to their child's safety.

Safety labels on toys and buckets will alert parents about hazards they may not be fully aware about or may not be thinking about under the pressures of raising a family. If these labels plant that seed of caution, we will have done our job, and to those who say this goes too far I would simply ask, what child is not worth a slip of paper on a toy box?

I am pleased to note this morning another crusader in the area of children's safety, our distinguished colleague from Connecticut, the senior Senator from the nutmeg State, Senator Chris Dodd. Senator, welcome to the committee. We are delighted to have you here, and, as always, to be enlightened by your considerable wisdom.

STATEMENT OF HON. CHRISTOPHER DODD, U.S. SENATOR FROM CONNECTICUT

Senator DODD. I appreciate that. That is a nice way to begin the day. And thank you, Mr. Chairman, immensely, for the opportunity to be here. And also, my deep appreciation to you and your staff and other members of the committee for holding this hearing. As you know and have pointed out already and I am appreciative of it, I have had a strong and longstanding interest in this issue, and generally in the issue of children and their problems.

The single largest cause of death of children in our country is avoidable injuries. If we could just reduce avoidable injuries, we could make a dramatic inroad into deaths to our young people. And I appreciate immensely your work; Senator Gorton's work; and the work of Cardiss Collins, my former colleague in the House for whom I have the highest degree of respect.

It is appropriate to begin, I suppose Mr. Chairman, by just telling you that I strongly support legislation that would help reduce the number of toy-related injuries that occur every year. As you know, and as I mentioned earlier, I have introduced toy labeling bills in the last two Congresses. I did this because I was deeply concerned about the very real threat that some toys have posed to our Nation's children.

All too many parents have experienced the horror of having a child choke on a toy or a game piece. In many cases the problem

is not that the toy itself is dangerous when used properly by a child of the age for which it is designed. Rather the hazard arises when parents buy toys that are meant for an older child in the mistaken belief that the guidance about the appropriate age refers to their child's intellectual development rather than his or her ability to play with a toy safely.

A look at recent statistics illustrates the scope of the problem. In 1991, there were an estimated 163,600 toy-related injuries in this country. From January 1991 to September 1992, at least 31 children died in toy-related accidents in this Nation. Almost one-half of the injuries were to children under 5 years of age. These numbers are tragic not only because any child's death or injury is sad, but particularly because they are toy-related injuries. We think of toys as representing the fun and innocence of childhood, and are therefore shocked when they become the agents of injury and death. Clearly, this is an issue that we have to address and to address carefully.

Last year, my own State of Connecticut became the first State to enact a toy-labeling law. I followed the Connecticut debate closely and was impressed by a process that reflected a cooperative effort among lawmakers, consumer groups, and toy manufacturers. One manufacturer, Lego Systems of Enfield, CT, was particularly helpful in bringing about this groundbreaking legislation, and you are going to hear from them later today.

Lego worked diligently with State lawmakers to enact a labeling law, and during debate Lego's labeling was held up as an example of how to warn parents of the presence of small parts. The legislation that I introduced in 1992 was modeled on the Connecticut law, and I hope we can recreate the same atmosphere of productive cooperation at the Federal level. I am particularly pleased that the subcommittee, as I said, will have the opportunity to hear about Lego's experience on this issue.

My measure, the Toy Injury Reduction Act of 1992 would have required that toys and games that have small parts and that are intended for children between the ages of 3 and 7 contain a "conspicuous cautionary label," and clearly and specifically communicate that the contents include small parts and pose a hazard to children under the age of 3. This legislation would have ensured for the first time that parents were explicitly informed that the age grading on toys and games applies to safety as well as intellectual development.

I felt strongly Mr. Chairman that this legislation struck an important balance, a balance that would convey the critically important safety message to parents without creating an unnecessary burden to industry. Let me point out at this particular juncture, 70 percent of all the toys that American children use are produced outside of this country, and that number is growing larger ever day. It is a very small U.S. manufacturing market that we deal with. I mentioned Lego, a big part of its manufacturing operations in the country are in my State of Connecticut, but there is a shrinking number of companies involved in the manufacture of children's toys. It is a trade issue.

The proposal requiring a visible label with a safety warning would have allowed parents to make an informed decision on which

toys to buy. We are talking about parents here—these are not children buying these toys but their parents buying these toys. We should allow manufacturers the flexibility to position and design the message as long as the safety message is clearly communicated to the purchaser.

You will hear testimony today, Mr. Chairman, from Peter Eio of the Lego Systems from my Home State of Connecticut. I would like to express my deep appreciation to you for allowing Mr. Eio and Lego the opportunity to testify and let their views be known. I think you are going to enjoy their testimony. This is a highly responsible manufacturer, not just in this particular area, but across the board—22,000 teachers in this country have gone through training programs sponsored by Lego Manufacturing. One of the best child care programs I have ever seen anywhere is run by Lego Systems and illustrates their sensitivity to children's needs.

As they put forward their recommendations for this bill, I would hope that you and the members of the committee would carefully consider their suggestions. They come not just from the point of view of a manufacturer, but someone who has produced goods with small parts worldwide and who is tremendously sensitive with a wonderful record, I might add, with their products, but who also understands the needs of the manufacturer in this area.

I think it is worth hearing from them. Legos are now a part of our Nation's fabric, and the vast majority of American households with children now have at least one Lego set.

While Lego has enjoyed immense success in this country, the company has never lost sight of the importance of toy safety, often leading the way for toy safety measures in the industry. And, although Lego sets contain almost nothing but small parts, the company has an exemplary safety record. This is due in part to the early recognition that parents did not clearly understand the safety component of the age grading on packages. Since it began marketing toys in the United States in the early 1970's, Lego has always clued parents to the presence of small parts.

As we develop toy-labeling legislation, I think we have got to ensure that we adequately warn parents of dangers, but we also have to strive not to unnecessarily scare parents away from products that have a proven safety record and are educationally valuable. I believe that we can fashion toy- labeling legislation in a way that clearly conveys the safety message without placing a needless burden on the manufactures. In his testimony today, Mr. Eio will describe the effect that overly restrictive legislation could have on his company, a company that is committed to providing safety warnings to parents in other countries.

However, they reasonably want you to consider a cost-effective way to accomplish that, allowing companies that produce toys for distribution in several countries flexibility in designing the warning as long as it meets safety requirements. This would serve two purposes: it would give these companies the ability to produce toys in this country for both domestic and foreign markets; and, it would allow them to make sure the safety message reaches parents in other countries through a combination of pictures and words.

In my view, we in Congress should support legislation that encourages companies to warn parents of the dangers of toys all over

the world, not just in this country. As we enter a global marketplace at a time when the world is shrinking, it is critically important that we try and come up with labels and standards here that will achieve not only the goals that we desire for our own children, but also, as we have talked about, expanding trading opportunities that will reach and protect children in other parts of the globe, as well.

Again, Mr. Chairman and members of the committee, I want to express my appreciation for this opportunity to testify and urge you to act promptly, as I am sure you will, to enact important legislation. I am proud to have been a part of this debate over the past several years and am delighted that the committee which has the jurisdiction over these issues has an equal level of commitment to the matter. I am also proud, as I mentioned earlier, that a Connecticut company has played and will continue to play, a constructive role in the toy safety issue.

We never would have passed the toy-safety labeling bill in Connecticut had it not been for them, the only State to have ever passed such legislation. We are deeply proud of that involvement and commitment. I would hope that you would take their suggestions seriously, in terms of putting this legislation together. I think we have a wonderful opportunity to do this right.

Obviously, anything we come out with that is called toy safety and labeling will have support. Who is going to want to be against it? People do not want to be on the opposite side of trying to protect kids. But hopefully, we will do it in a way, Mr. Chairman, that will not only achieve those goals but also take into consideration the legitimate concerns of business.

So, with that note, Mr. Chairman, I thank you for inviting me to come by this morning and appreciate the opportunity to testify.

[The prepared statement of Senator Dodd follows:]

PREPARED STATEMENT OF SENATOR DODD

Mr. Chairman, thank you for allowing me to testify on this very important matter this morning.

I strongly support legislation to help reduce the number of toy-related injuries that occur every year. As you know, I introduced toy labeling bills in the last two congresses. I did this because I was deeply concerned about the very real threat that some toys pose to our Nation's children.

All too many parents have experienced the horror of having their child choke on a toy or game piece. In many cases, the problem is not that the toy itself is dangerous when used properly by a child of the age for which is it designed. Rather, the hazard arises when parents buy toys that are meant for an older child, in the mistaken belief that the guidance about appropriate age refers to their child's intellectual development rather than his or her ability to play with the toy safely.

A look at recent statistics illustrates the scope of the problem: In 1991, there were an estimated 163,600 toy-related injuries. From January 1991 to September 1992, at least 31 children died in toy-related accidents. Almost half of the injuries were to children under 5 years of age. These numbers are tragic—not only because any child's death or injury is sad—but particularly because these are toy-related injuries. We think of toys as representing the fun and innocence of childhood and are therefore shocked when they become the agents of injury and even death.

Clearly, this is an issue we must address.

Last year, my own State of Connecticut became the first State to enact a toy labeling law. I followed the Connecticut debate closely and was impressed by a process that reflected a cooperative effort among lawmakers, consumer groups and toy manufacturers. One manufacturer, Lego Systems of Enfield, Connecticut, was particularly helpful in bringing about this ground-breaking legislation. Lego worked diligently with State lawmakers to enact the labeling law, and during debate, Lego's

labeling was held up as an example of how to warn parents of the presence of small parts. The legislation I introduced in 1992 was modeled on the Connecticut law, and I hope we can re-create the same atmosphere of productive cooperation at the Federal level. I am particularly pleased that the subcommittee will have the opportunity today to hear about Lego's experience on this issue.

My measure, the Toy Injury Reduction Act of 1992, would have required that toys and games that have small parts and that are intended for children between the ages of 3 and 7, contain a "conspicuous cautionary label" and "clearly and specifically" communicate that the contents include small parts that pose a hazard to children under the age of 3. This legislation would have ensured, for the first time, that parents were explicitly informed that the age grading on toys and games applies to safety, as well as intellectual development.

I felt strongly last year that this legislation struck an important balance: A balance that would convey the critically important safety message to parents without creating an unnecessary burden to industry. The proposal, requiring a visible label with the safety warning, would have allowed parents to make an informed decision on which toys to buy, while at the same time allowing manufacturers the flexibility to position and design the message, as long as the safety message was clearly communicated to the purchaser.

You will hear testimony today from Peter Eio of Lego Systems from my home State of Connecticut. Mr. Chairman, I would like to express my appreciation to you for allowing Mr. Eio and Lego the opportunity to testify and let their views be known. As they put forward their recommendations for this bill, I would hope that you and all the members of this committee will carefully consider that their suggestions come from a company that has, over the years, exhibited a high level of commitment to toy safety.

Legos are now a part of our Nation's fabric and the vast majority of American households with children now have at least one Lego set. While Lego has enjoyed immense success in this country, the company has never lost sight of the importance of toy safety, often leading the way for toy safety measures in the industry; and although Lego sets contain almost nothing but small parts, the company has an exemplary safety record. This is due, in part, to the early recognition by Lego that parents did not clearly understand the safety component of age grading on packages. Since it began marketing toys in the United States in the early 70s, Lego has always included a message alerting parents to the presence of small parts.

As we develop toy labeling legislation, we must ensure that we adequately warn parents of dangers, but we also should strive not to unnecessarily scare parents away from products that have a proven safety record and are educationally valuable.

I believe we can fashion toy labeling legislation in a way that clearly conveys a safety message, without placing a needless burden on manufacturers. In his testimony today, Mr. Eio will describe the effect that overly restrictive legislation could have on his company—a company that is committed to providing safety warnings to parents in other countries. However, they reasonably want you to consider a cost-effective way to accomplish that.

allowing companies that produce toys for distribution in several countries flexibility in designing the warning as long as it meets safety requirements would serve two purposes: It would give these companies the ability to produce toys in this country for both domestic and foreign markets and allow them to make sure the safety message reaches parents in other countries through a combination of pictures and words. In my view, we in Congress should support legislation that encourages companies to warn parents of the dangers of toys all over the world.

Again, Mr. Chairman and members of the committee, I appreciate the opportunity to testify today and urge you to act promptly to enact this important legislation. I am proud to have been a part of this debate over the past several years and am delighted that this subcommittee, which has jurisdiction over these issues, has an equal level of commitment. I am also proud that a Connecticut company has played and will continue play a constructive role on the toy safety issue. I am confident that working together we can achieve the worthy goal of this legislation, which is to ensure that when a parent stands in a toy store and contemplates purchasing a toy for a child, the parent takes into account safety considerations for the child.

Senator BRYAN. Senator, we appreciate very much your comments as well as your leadership on this issue. You are welcome to stay, but I recognize you may have other time commitments. So, if you need to excuse yourself at any time, we will certainly understand.

Senator DODD. I thank you, Mr. Chairman. I have got a good friend of mine, Lee Brown, who is about to be sworn in this morning as the new drug czar at the White House, and he has asked me to come down to be there with him, and I want to be with him and his family. He is a good friend.

Senator BRYAN. Good luck.

Senator DODD. Thank you.

Senator BRYAN. The committee is equally pleased this morning to have one of our distinguished colleagues from the other body whose own leadership in this area has long been acknowledged, and who has been the principal catalyst in getting legislation of a similar nature introduced and cleared through the House.

She represents the Seventh Congressional District of Illinois and chairs the corresponding subcommittee in the House, and we are pleased to have with us this morning Congresswoman Cardiss Collins. Congresswoman, we are delighted to have you here and look forward to hearing your comments.

STATEMENT OF HON. CARDISS COLLINS, U.S. REPRESENTATIVE FROM ILLINOIS

Ms. COLLINS. Thank you very much, Mr. Chairman. Let me say that I offer my apology for not being on time, but I was unavoidably delayed, and I certainly thank you for allowing me to present my testimony this morning.

I am here, of course, to express my full support for S. 680, the Child Safety Protection Act. The legislation, of course, requires warning labels for toys that pose a choking hazard to small kids. The bill also establishes minimum size requirements for balls made for children under the age of 3 and, of course, requires the development of a mandatory safety standard for bicycle helmets.

S. 680 is companion legislation to H.R. 965, the Child Safety Protection Act which I introduced and which was passed in the House in March by a vote of 362 to 38.

I certainly commend you, Mr. Chairman, for holding these hearings today and Senator Gorton for introducing S. 680. In addition, I wanted to personally commend Senator Dodd, and Senators Metzenbaum and Danforth for their work on child safety issues.

As someone who has made toy and bike helmet safety issues a priority since I became chairwoman of the House Subcommittee on Commerce, Consumer Protection and Competitiveness, I am happy to see legislation dealing with these issues moving through the Senate.

The Consumer Product Safety Commission says that between January 1980 and July 1991, 186 children choked to death on balloons, marbles, small balls, and other children's products. Now, countless more children have been injured by such toys. While the State of Connecticut recently enacted labeling legislation, there are no nationally required warning labels to alert parents to the choking hazards of small toys, balloons, marbles, and small balls.

Some toy companies voluntarily use labels, but since there is no nationally required language, the label can say virtually anything the toymaker wants it say. Many of these labels do not warn of the choking hazards associated with the toys. The simply say, "for ages up to 3," or "not recommended for children under 3." In these

cases, a parent could easily think the age level has to do with the intelligence of the child instead of the hazards posed by the toy. The Child Safety Protection Act will cure this problem by requiring cautionary labels on applicable toys to warn of choking hazards.

In a recent hearing that was held by the House Subcommittee on Commerce, Consumer Protection, and Competitiveness, we had before us many packages of toys. And we found that those packages were so cluttered with design details that it was practically impossible for us to find the warning language on those packages that actually did have warning labels. Some of the warnings were even written in foreign languages. Others were just almost impossible to see.

Now, the Child Safety Protection Act provides for the warning to be enclosed in a rectangular box, and has other similar requirements to ensure that the warning is visible to the purchaser.

Mr. Chairman, currently balls that are small enough to choke children under the age of 3 can legally be marketed for the age group. The Child Safety Protection Act requires minimum choke-proof size requirements for balls intended for children under age 3. It does not require toymakers to stop making balls of certain sizes, it only prohibits the marketing of the smallest ones to kids under that age of 3.

Now concerning the bicycle helmets, the CPSC says each year there are approximately 1,200 bicycle-related deaths. Head trauma is responsible for 70 percent of those deaths. In addition, each year, over one-half million injuries related to bicycles are treated in hospital emergency rooms. Approximately 30 percent of these injuries involve the face or the head.

Children under the age of 15 represent about two-thirds of the bicycle-related injuries and a third of the bicycle-related deaths.

Currently, helmets sold in the United States that meet voluntary standards conform to either the American National Standards Institute or the Snell Memorial Foundation bicycle helmet standards. Neither standard addresses roll-off resistance or includes specific requirements for children's helmets. There are no legal requirements to ensure compliance with these standards.

The Child Safety Protection Act will make sure that all helmets are designed to protect children and adults from bicycle-related head injuries. Under the Child Safety Protection Act, the CPSC must develop a new Federal standard based on the existing voluntary standard, and include requirements that will protect against the risk of helmets rolling off the heads of the riders, requirements for children's helmets, and any other appropriate requirements. While the CPSC is working on the new standards, the bill requires that all helmets made after a certain date must meet at least one of the voluntary standards.

The child safety bill received strong support from both sides of the aisle in the House. In the 102d Congress, essentially the same toy, safety, and bicycle helmet provisions were approved by the House when it passed H.R. 4706, the Child Safety Protection and Consumer Product Safety Commission Improvement Act by voice vote with bipartisan support.

Support does not stop in the House. There is broad-based support for having national toy safety requirements and a mandatory bicy-

cle helmet standard. Health and safety experts think toy labeling, and minimum size requirements, and mandatory requirements for bicycle helmets are a good idea. Consumer advocates think so. Even the toy manufacturers themselves now think having a national toy labeling law is a good thing, and they support minimum size requirements. The bicycle helmet manufacturers want a mandatory bicycle helmet standard, I believe.

I would certainly urge this subcommittee, the committee, and the full Senate to help protect our children from hazardous products by moving and enacting the Child Safety Protection Act. And I thank you for the allowing me the opportunity to be a witness this morning.

[The prepared statement of Ms. Collins follows:]

PREPARED STATEMENT OF REPRESENTATIVE COLLINS

I am here today to express my support of S. 680, the Child Safety Protection Act. This legislation requires warning labels for toys that pose a choking hazard to small children, the bill also establishes minimum size requirements for balls made for children under age 3, and requires the development of a mandatory safety standard for bicycle helmets. S. 680 is companion legislation to H.R. 965, the Child Safety Protection Act, which I introduced, and passed the House in March by a vote of 362 to 38.

I want to commend you, Mr. Chairman, for holding hearings today and Senator Gorton for introducing S. 680. In addition, I commend Senators Dodd, Metzenbaum and Danforth for their work on child safety issues. As someone who has made toy and bike helmet safety issues a priority since I became the Chairwoman of the House Subcommittee on Commerce, Consumer Protection, Competitiveness, I am happy to see legislation dealing with these issues moving in the Senate.

The Consumer Product Safety Commission (CPSC) says that between January, 1980 and July, 1991, 186 children choked to death on balloons, marbles, small balls and other children's products. Countless more children have been injured by such toys.

While the state of Connecticut recently enacted labeling legislation, there are no nationally required warning labels to alert parents to the choking hazards of small toys and balloons, marbles and small balls.

Some toy companies voluntarily use labels but since there is no nationally required language, the label can say virtually anything the toy maker wants it to say. Many of these labels do not warn of the choking hazards associated with the toys. They simply say "for ages 3 and up" or "Not recommended for children under 3." In these cases, a parent could easily think the age levels have to do with the intelligence of the child instead of the hazards posed by the toy. The Child Safety Protection Act will cure this problem by requiring cautionary labels on applicable toys to warn of the choking hazard.

A recent hearing held by the House Subcommittee on Commerce, Consumer Protection and Competitiveness, we saw packages that were so cluttered with design details that it was hard to find the warning language. The Child Safety Protection Act provides for the warning to be enclosed in a rectangular box and has other similar requirements to ensure that the warning is visible to the purchaser.

Mr. Chairman, currently balls that are small enough to choke children under the age of three can legally be marketed for that age group. The Child Safety Protection Act requires minimum "choke proof" size requirements for balls intended for children under age three. It does not require toy makers to stop making balls of certain sizes; it only prohibits the marketing of the smallest ones to children under age 3.

Concerning bicycle helmets, the CPSC says each year there are approximately 1,200 bicycle-related deaths. Head trauma is responsible for 70 percent of the deaths. In addition, each year, over half a million injuries related to bicycles are treated in hospital emergency rooms. Approximately 30 percent of these injuries involve the face or head. Children under age fifteen represent about two-thirds of the bicycle-related deaths.

Currently, helmets sold in the United States that meet voluntary standards conform to either the American National Standards Institute or the Snell Memorial Foundation bicycle helmet standards. Neither standard addresses roll-off resistance or includes specific requirements for children's helmets. There are no legal requirements to ensure compliance with these standards.

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Support does not stop in the House. There is broad based support for having national toy safety requirements and a mandatory bicycle helmet standard. Health and safety experts think toy labeling and minimum size requirements and mandatory requirements for bicycle helmets are a good idea. Consumer advocates think so. Even the toy manufacturers now think having a national toy labelling law is a good thing and they support minimum size requirements. The bicycle helmet manufacturers want a mandatory bicycle helmet standard.

In conclusion, I urge this Subcommittee, the Committee and the full Senate to help protect our children from hazardous products by moving and enacting the Child Safety Protection Act.

I will be happy to answer any questions.

Senator BRYAN. Thank you very much, Congresswoman Collins, for joining us this morning and sharing with us some of your own observations from your successful legislative efforts in the House, and hopefully we can replicate those actions over here and we can all participate in signing this legislation. Thank you very much for joining us this morning. We appreciate your comments.

Ms. COLLINS. Thank you, Mr. Chairman.

Senator BRYAN. We will begin with our panelists next. We have in the first panel Dr. Joseph Greensher, Mr. Stephen Teret, Ms. Herta Feely, and Ms. Kristen Rand.

Dr. Joseph Greensher is the Medical Director of Winthrop University Hospital, and he is a Fellow with the American Academy of Pediatrics. Mr. Teret is the Director of Johns Hopkins Injury Prevention Center. Ms. Herta Feely is Executive Director of the National Safe Kids Campaign. Ms. Kristen Rand is the Counsel for Consumers Union.

Let me invite each of you to join us this morning. For the record, your full statements, which the subcommittee has been provided with, will be made a part of the record so that we can have ample time for questions. Let me suggest that we confine our testimony to 5 minutes each.

Before calling upon the panel, a colleague of ours joins us now who, earlier this week, escaped the earthly bonds of being a politician and has now been elevated to the status of a senior statesman. I am delighted to ask Howard Metzenbaum if he will join us.

Howard, we are going to ask you, if you would care to do so, to testify before the panel, recognizing that you have got a schedule to attend. And maybe if everybody could just scoot over just a little bit there and let Senator Metzenbaum get a seat there at the table.

He is the sponsor of the Bucket Drowning Prevention Act and has long been a forceful voice and an advocate for consumers, unswerving in his devotion to the cause, and highly respected by members of both sides of the political aisle. And earlier this week

he made an announcement that places him in a very different status than the rest of us who work in this institution.

Senator Metzenbaum, it is a real pleasure to have you before the subcommittee.

STATEMENT OF HON. HOWARD M. METZENBAUM, U.S. SENATOR FROM OHIO

Senator METZENBAUM. Thank you very much, Mr. Chairman. I am very pleased to be here with you and I appreciate the courtesy of those who are at the table to permit me to go forward. There are some people waiting in the office.

Mr. Chairman, there is no single tragedy that I can think of that is worse than the death of a child, especially when such a tragedy can be prevented. That is why I am such an ardent proponent of legislative measures designed to protect children from unsafe toys, bike helmets, and industrial sized buckets. I do not have to say to you that children are unprotected, the littlest ones, the toddlers. And so when one of them loses his or her life and it could have been prevented, and you say, well, "Why did we not do something about it"—it is a tragedy.

I have long supported efforts to encourage bike helmets used by children, as well as to require uniform Federal safety standards for adults and child size bike helmets. As a matter of fact, I introduced separate legislation on this which I understand is similar to a measure reported out of this committee for which I commend you. I understand this measure is now awaiting Senate action.

Senator Gorton's toy labeling bill, which is part of the focus of today's hearing, also includes language mandating a uniform safety standard for bike helmets, and I commend him for that leadership.

I wholeheartedly support the committee's continued action in these areas. But I am here today to speak directly about the long-ignored hazard of toddlers drowning in buckets. I introduced S. 799, the Bucket Drowning Prevention Act, to help illuminate a hidden in-home safety hazard which threatens millions of American infants each day.

Not long ago, I heard the heartbreaking recording of a young mother who called 911 to report that her toddler had drowned in an industrial bucket the mother had been using for household cleaning. Since 1985, approximately 400 children have died in their homes when they have toppled head first into industrial size plastic buckets, drowning in the liquid contents of those buckets.

We cannot bring the children back. I wish we could. But we can help prevent such tragedies from occurring in the future. The bill I have introduced would require that warning labels be placed on these industrial size buckets to avoid such tragedies. It is not really such a major move, but one that could be very helpful.

Most people do not realize the threat that these 4- to 6-gallon plastic buckets pose to toddlers. They appear innocuous enough. These buckets can be purchased new in stores for heavy-duty household chores. There is no advocacy on my part that they be prevented from being sold. But millions of these buckets are used each year by industry to transport commercial quantities of products such as food, paint, or construction materials, and when they

are emptied of their original contents these industrial containers oftentimes wind up in family homes.

The industrial buckets, when used in homes, present a very real danger to small children and infants. Tragic drowning accidents occur because the child, the toddler, has a limited physical capacity. Top heavy when small, toddlers can fall head first into a bucket and not be able to get out of it or to tip it over. Indeed, nearly 80 percent of all the reported drowning victims were between the ages of 8 to 13 months old.

Mr. Chairman, sometimes I may be difficult on the floor or in a committee, but I want to tell you this. Nothing causes me to be softer than a little child; a little child that is unprotected, particularly a child that might lose his or her life because we had an opportunity to do something about it and we did not. As I previously stated, I am not suggesting that we ban the sale of these buckets or that they be prohibited from being used. But I am suggesting just a simple action.

Only 10 percent of the industry voluntarily labels its buckets to warn of the drowning hazards. Though California has enacted a bucket labeling law, there are no existing national voluntary or Federal mandatory labeling standards. And despite Consumer Product Safety Commission staff recommendations to the contrary, the Commission has not moved forward to mandate warning labels or performance standards for these buckets. It is not a proud statement to make about their involvement.

The bill I introduced mandates that clearly visible warning labels in both English and Spanish must be placed on these industrial buckets, since in 14 percent of the deaths Spanish was reported to be the spoken language. The bill also requires the Consumer Product Safety Commission to promulgate a performance standard to ultimately change the design of these buckets so that drownings cannot occur.

This bill has the support of the National Safe Kids Campaign, the Consumer Federation of America, the Consumers Union, the U.S. Public Interest Research Group, Congress Watch, the American Academy of Pediatrics, and the California State Fire Fighters Association.

Mr. Chairman, you and I and the 98 other Members of the Senate, we deal with major issues. Maybe it is NAFTA on one day, maybe it is GATT on another day, maybe it is a strong effort to provide jobs for Americans or a budget balancing proposal. We deal with those issues regularly. But I believe that there is no more important piece of legislation that we can consider than one that can save the life of one or more toddlers in this country.

I urge my colleagues to report this bill favorably out of committee and ensure the bill's quick passage. Quick passage will help prevent any tragic childhood drownings. And I ask, Mr. Chairman, that a letter from the California State Fire Fighters Association supporting this measure be inserted in the record. The group was an integral force in the introduction and passage of California State legislation, and I would hope that their letter of support could be included in the record.

Senator BRYAN. The letter will be made a part of the record.

[The information referred to follows:]

LETTER FROM DON BARKAS, CHAIRMAN EMS COMMITTEE, CALIFORNIA STATE FIREFIGHTERS' ASSOCIATION

JUNE 25, 1993.

Mr. RICHARD BRYAN,
U.S. Senate,
Washington, DC 20510–6125

DEAR MR. BRYAN: I have been contacted by representatives of the National SAFE KIDS Campaign and Senator Metzenbaum's office for comments regarding the "Bucket Drowning Prevention Act of 1993". I am the chairman of the California State Firefighters Association (CSFA) Emergency Medical Service Committee.[1] It was the firefighters association and Assemblywomen Archie-Hudson who first introduced the California Bucket Labeling requirement in the California State Legislature and I have been involved since the inception of this project. I have also participated in the ASTM Voluntary Labeling Standard Committee which has recently been completed and am currently working on the ASTM Committee developing a permanent labeling standard.

As you are already aware, since 1985 several hundred infants and toddlers have drowned in 4 to 6 gallon straight sided industrial containers. I first became aware of this fact when I was working on another project dealing with emergency dispatchers. After speaking with a Northern California women who had first hand knowledge of this, and the tragic results, decided that the CSFA should begin the process to see this problem corrected.

I was surprised to learn that although this danger has been tracked for several years by the CPSC and the bucket manufactures had full knowledge, little if anything was done to prevent these senseless and avoidable deaths. I am aware that an industry sponsored program to provide labels to consumers does exist, it is so far ineffectual and a waste of time and money.

While working in the California Legislature I was contacted by representatives of the ASTM and Consumer Product Safety Commission. I was asked to participate on a committee to develop voluntary standards for warning labels. It was clear to me from the beginning that this process would be complicated and time consuming. Added to this the fact that the committee was very heavily weighted by manufactures and fillers of buckets I felt that my participation was critical if anything positive was going to come forth. I am sorry to report that the results of this committed have been somewhat disappointing.

Many of my opinions for both the California Legislation and the Voluntary Standard comes from conversations that I have had with representatives of the CPSC and ASTM in addition to the National SAFE KIDS Campaign. However, all of the suggestions and comments I have received believe have been relevant, and based on fact, not finances.

I understand that there is considerable opposition to a multi colored label. I have enclosed a sample of a label that is made on California to meet the California legislative requirements. Several versions of the standard have referred to the ANSI Standard (Z535.4) for Cautionary Labeling. The CSFA feels very strongly that these ANSI Standards should be adhered to in every way possible. It is imperative that this standard be used so that a valid, reliable label can be produced that will be recognized and heeded by every segment of the population. However, in order to compromise the language that was used is "contrasting". Although we do not feel that this is the best language, we also felt some good would come from a contrasting label. For this reason we feel that all letters, words and figures on the National label should be printed in colors that comply with ANSI Standard Z535.4. The cost of this label, provided by our manufacturer is 2.2 cents per label.

Finally, the California State Firefighters' Association firmly believes that adopting this proposed label, without a Spanish co-label, will be a sorry waste of money and energy. CPSC Focus Group Testing, and the drowning statistics themselves, support our opinion that a Spanish worded label, affixed on the opposite side of the bucket from the English version, will greatly impact this hazard in the Hispanic Community.

The addition of a second label will also add another dimension to this legislation. By requiring only one label, only individuals who approach the bucket from the correct side will have an opportunity to view the label and heed its advice. The addition of another label, affixed on the opposite side from the first, will greatly enhance the opportunity for this label to be observed. The demographic focus group testing

[1] The California State Firefighters' Association represents over 34,000 paid and volunteer firefighters in the State of California. The Emergency Medical Services Committee is one of 10 standing committees authorized by the bylaws and funded by the Board of Directors.

has clearly shown that the "pictorial" by itself is an important factor in the recognition of this hazard. This second label will then increase the awareness of this danger, merely by its presence.

In conclusion I would like to point out the this danger is not new or recently discovered. The manufacturers have known for years that this potential problem exists and have done nothing to take the necessary steps that would reduce theses infant deaths. Positive action by your committee and the Congress is necessary to solve this problem. The California State Firefighters' Association and our 34,00 members strongly support this bill and look forward to its passage in the future.

The California State Firefighters' Association and myself would like to thank you for the opportunity to express our views and participate in the process for the proposed document. I place both myself and Ms. Tina Ellis at your disposal for any questions or concerns that you may have. If at any time you feel that our testimony would assist with your or your committee members in making this important decision please feel free to inform us and we will be available.

Respectfully,

DON BARKAS,
Chairman EMS Committee, California State Firefighters' Association.

Senator METZENBAUM. In conclusion, I would like to say my office has been working with both industry and consumer groups on this issue. I will continue to keep a dialog open with these groups to ensure the legislation reflects their concerns while achieving the intended purpose of the bill—preventing needless tragic child drownings in industrial buckets.

Mr. Chairman, I thank you and I thank the other members of the committee, as well as those who have permitted me to go forward at this time. I urge you and beseech you to move in connection with this legislation.

Senator BRYAN. Senator, we appreciate very much your comments and testimony, and we will take them all to heart.

Senator METZENBAUM. Thank you very much.

Senator BRYAN. Thank you.

Again, to suggest an outline so that we can hear everybody's testimony and have ample time for any colloquy between any of our colleagues who may join us, I would like to ask each of the panelists to try to confine their comments to 5 minutes. We assure you that your full text will be made a part of the record for these proceedings.

Dr. Greensher, since we dispossessed you temporarily a moment ago, and my apologies to that, maybe we can begin with you.

STATEMENT OF JOSEPH GREENSHER, M.D., MEDICAL DIRECTOR, WINTHROP UNIVERSITY HOSPITAL, AND FELLOW, AMERICAN ACADEMY OF PEDIATRICS

Dr. GREENSHER. Thank you, Senator Bryan. It is a pleasure to be here addressing the committee, and I thank you for this honor, particularly following Senator Metzenbaum.

I am a pediatrician. I have been associate chairman of the department of pediatrics in our institution for a number of years. And I direct the residency program. I am here on behalf of the American Academy of Pediatrics in support of S. 680, the Child Safety Protection Act.

It is not the first time that I or the Academy of Pediatrics have addressed the issue of labels. I was here in front of this committee in April 1981 as part of the reauthorization of the Consumer Product Safety Commission. Part of the testimony involved a need for appropriate labeling of toys.

I have with me an old Barbie fashion card with small parts from the 1981–82 era. And the only notice up here is for ages over 3. So, we have made a lot of progress since then. The Academy of Pediatrics testified in front of this committee in March 1989, and again reiterated a need for more appropriate labeling.

The labeling today on many of the toys carry ages 4 to 5. On this toy, which is a Sound of Power—it comes with a large sophisticated car and also a warning: "Small parts may be hazardous to children under 3 years of age."

We have made progress.

The Jurassic Park toys that one sees in the toy shops today carry a warning that the small parts pose a choking hazard.

Progress again.

At the same time, a member of our American Academy of Pediatrics staff here in Washington went shopping looking for some small parts yesterday, came back with this toy purchased in Washington, in which there is a little ball in here that measures 1 inch in diameter, various small plastic jacks, and not a single warning on this toy that it is inappropriate for children under 3 or anything.

So, we have a long ways to go.

As a pediatrician, I very well understand how children explore their environment. The infant and toddler sees and then reaches out with his hand for everything that he sees. And everything that gets into his hand gets into his mouth. And once it gets into his mouth is where our problems begin.

I would like to discuss the concept of how a child chokes with you, and would like you to try to conceptualize that a child's airway is like a funnel. It has got a large top and then gets narrow, becomes the trachea, the single large breathing tube, then branches out into a bronchial tree, three branches on the right, two on the left.

When an object enters a child's mouth, it goes into the big end, falls in, then depending on the configuration and the size of the toy, it may partially or totally block the airway. If it totally blocks the airway, there is an immediate emergency that exists. You have 5 minutes to correct it. If you do not correct it, the minimum you are going to have is a child that is brain damaged. The maximum you are going to have is a dead child.

Smaller pieces can fall through this and fall down into the bronchial tree. There they only obstruct the airway partially. The problem there becomes one of getting that piece out. Frequently, it is a piece that cannot be seen on x-ray, if it is made from plastic, frequently, it is a piece that is so small that it wedges way down and becomes a major challenge in a small child to bronchoscope and retrieve this.

Many of these incidents are unseen, so that these children present with recurring pneumonias. And it is only after a number of episodes of pneumonia in the same location that somebody registers the fact that, hey, maybe there is a foreign body down there. And then, if somebody is daring enough, they will bronchoscope that child and remove that piece out of the airway.

The morbidity and mortality that is involved we have heard about. I do not need to reiterate the statistics. What can we do about this? Are labels the total answer? No, not at all.

We need to approach this problem from an injury prevention point of view, and I have been active in this area for 20 years. Particularly with respect to choking, one has to look at it from what can we do first to try to prevent the injury from occurring. And to prevent the injury from occurring we need for the parent to be aware that there is a potential hazard. That is where labeling comes in. We need an educated consumer group. And the American Academy of Pediatrics and many of my colleagues from other organizations have been working very diligently over the years to sensitize the public to risks. You cannot always avoid the situation from happening, even with all of the education.

So, the second aspect, if the act happens, what do you do about it?

And there is a major campaign that has been ongoing to teach the public that deals with children how to respond as a first aid responder, with some CPR knowledge on how to relieve these obstructions we were talking about.

There is no emergency medical service system—and I chair the one in our county, in Nassau County, which is an extensive one—that can reach a victim within 5 minutes and be of much use. So, the onus falls upon the individual at the scene. And we are working on that aspect.

But there is a mindset that we need to create. In this mindset, there has got to be a concept of a hazard, and part of that is appropriate labeling, so that this remains with the parent when purchasing the toy, so that they know, if I am buying it for an older child and I have got a younger child at home, I have got to know how to manage this when the child is through playing with it.

If we are to prevent the tragedies that we have heard about and continue to hear about, we need all of these steps. And I am happy to hear that the toy manufacturers association is, after all these years, willing to go that final step and identify the hazard on the toy itself, and not merely to have a conglomerate of different cautionary labels that is very difficult for the public to interpret. If we have one standard, we can do much better in getting this message across to the public. And all of us will come out better for it.

Thank you, Mr. Chairman.

[The prepared statement of Dr. Greensher follows:]

PREPARED STATEMENT OF DR. JOSEPH GREENSHER

WARNING LABELS ON TOYS

Mr. Chairman, I am Dr. Joseph Greensher, medical director of the Winthrop University Hospital in Mineola, New York, and I am here today representing the American Academy of Pediatrics, an association of 45,000 pediatricians dedicated to health promotion and injury prevention for infants, children, adolescents and young adults. I am past chair of the Academy's Committee on Injury and Poison Prevention. Thank you for the opportunity to appear before this committee to discuss an issue that represents a high priority for the Academy—the promotion of toy safety.

Play and playthings are important in the process of growing up, giving children an outlet for their energies, and an opportunity to explore their world through fantasy and experimentation. However, the toys that play such a prominent role in the development of children can also be very harmful.

Small parts, whether from toys or other household products, are a major cause of choking in pre-schoolers. Consider the numbers involved. The Consumer Product Safety Commission reports that 31 toy-related deaths occurred in the 21 months between January 1991 and September 30, 1992. Choking was reported to be involved in 14 of these fatal incidents. Four of the deaths involved balloons; all of these vic-

tims were under two years of age. Four of the deaths involved balls or marbles with victims 18 months old or younger. Six cases involved children who choked on parts from toys including a bell, pom-pom, ribbon, noisemaker parts, and a squirt gun nozzle tip. All of these victims were three years of age or younger. Between January 1980 through July 1991, there were a total of 186 child deaths from choking on children's items, including 76 deaths involving balloons, 40 involving balls, and 10 involving marbles. Some of the items involved in the deaths to children under three appeared to be of the type intended for older children.

A child's airway is about the same size as that child's pinkie finger. Thus, it is easy to see that there are many objects that could obstruct a child's airway. There are two types of problems that can result from children swallowing toy parts or other small objects. First, the object could totally obstruct the child's airway, causing the child to choke and either die or suffer permanent brain damage from lack of oxygen if the obstruction is not relieved within about five minutes.

Alternatively, the object could partially obstruct the airway, allowing the child to continue breathing but possibly causing damage to the larynx, trachea, bronchi, or lungs when the object has to be extracted. If it remains in the passages undetected for any period of time, it may cause infection or pneumonia. Small plastic toys and toy parts have presented a special problem in this regard because they generally are not visible by X-ray. Thus, aspirations can be misdiagnosed as recurrent pneumonias until suspicion of a foreign body arises and is confirmed by bronchoscopic examination. (If all small toy parts could be so produced that they were visible on X-ray examination, it would have a very positive effect on reducing morbidity associated with aspiration of plastic parts. The addition of barium sulfate to plastic is one way to make it radiopaque, a process already used by the Mattel toy company.)

It is generally recognized that if a choking child can speak or breath and is coughing, that the child should be left to cough and dislodge the object him- or herself. Coughing is the natural defense mechanism for expelling foreign material from the trachea and can be more effective than artificial methods to generate similar expulsion forces. However, if the choking child is unable to breathe, cough, or make a sound, a series of abdominal thrusts, or back blows for infants, may be necessary to expel the foreign object. The Academy recommends that all parents and other people caring for a child (including siblings, grandparents, and baby-sitters) take first-aid and CPR courses at which they learn how to handle a choking situation. Much more effective and important, however, is to prevent the problem in the first place.

The Academy recommends that in households with children under three years of age there be no toys with small parts accessible to these children. Toys for children under three years of age should not have any small parts that could pose a choking hazard. In addition, toys should not come apart easily or be easily shattered.

A second problem related to aspiration or ingestion is the availability of toys intended for older children, and those merely labeled for use by older children. This distinction is important and the latter requires a different prevention strategy. In the first situation, older children's toys become unintentionally available to younger ones in the family. The second situation is more insidious and involves simple, poorly constructed toys with hazardous small parts which are obviously intended for the very young child but circumvent the law by carrying a label of intent for use by an older child. Instructions and labels should be read carefully for minimum age of use, but a toy's safety for smaller children should be evaluated regardless of what the label says.

Pediatricians advise parents to purchase toys appropriate for a child's age, development, and temperament. In evaluating a child's ability to handle a toy safely, the parent should consider the child's maturity as well as his chronological age. Again, age group labels on toy packaging should be used as guidelines only. Parents should be alerted to watch for mislabeled toys, i.e., those labeled for older children but clearly intended to catch the fancy of younger ones.

Moreover, parents should be aware that toys that are misused or used without proper supervision can pose as great a hazard as a defective or inappropriate toy. Further, parents should keep older children's toys out of the reach of younger siblings. Younger children should always be supervised at play, even though the toys they are using are considered safe. Young children love to put things in their mouths and are very ingenious—a combination that can cause unanticipated trouble.

To help families avoid the hazards of toys, games, balls, balloons, and marbles, the Academy supports the labeling requirements included in S. 680, and the ban on small balls intended for children under three years of age. If enacted, I am confident that the labeling requirements will help to avert the tragedy of a child choking to death or becoming permanently brain-damaged due to a simple lack of insight

or knowledge about the lethal nature of certain playthings. In helping to prevent such tragedies, this legislation is truly pro-child and pro-family. On behalf of the Academy, I would like to commend the Chairman, Senator Gorton, and the bill's other cosponsors for promoting this legislation.

BICYCLE HELMET STANDARD

The Academy also supports Section 4 of S. 680, regarding standards for bicycle helmets. Each year in this country, bicycles are associated with 1,000 deaths and at least half-a-million emergency department visits. Head injury is the most common cause of death (70-80 percent) and the leading cause of disability from these unintentional injuries. The Academy has recommended since 1990 that the Consumer Product Safety Commission develop a mandatory, uniform safety standard for bicycle helmets so that consumers can be assured that the helmets they are purchasing will be effective. Accordingly, we enthusiastically endorse this provision of S. 680 as well. Attached for the record is the Academy's policy statement regarding bicycle helmets.

5-GALLON BUCKETS

Finally, although the Academy has not taken an official position on S. 799, we support the efforts of Senator Metzenbaum and others to address the hazard posed by 5-gallon buckets. Each year, 25 infants and toddlers drown after they fall into large buckets and are not able to extract themselves. If such buckets are used, all water should be removed from them immediately after use.

Thank you.

["Bicycle Helmets," by the Committee on Accident and Poison Prevention may be found in the committee's files.]

Senator BRYAN. Thank you very much, Dr. Greensher.

I am going to ask one of our staff members shortly just to bring those toys up so that we can take a look at them up here in a minute.

Mr. Teret, we welcome you to the subcommittee hearing this morning, and are most interested to hear in more detail the findings of your study, which I think was published in JAMA, if I recall correctly.

STATEMENT OF STEPHEN P. TERET, DIRECTOR, JOHNS HOPKINS INJURY PREVENTION CENTER

Mr. TERET. Yes, that is correct, Mr. Chairman.

And thank you very much for giving me the opportunity to talk to you about this difficult and important problem.

My name is Stephen Teret. I am the Director of the Johns Hopkins Injury Prevention Center in the Johns Hopkins School of Public Health.

I am in full agreement with Dr. Greensher. The critical point that we have to focus on is the prevention of tragedies such as those described by Dr. Greensher. And critical to the prevention, as you have described, Mr. Chairman, is conveying to parents the risks that they create in the home when they bring a toy with small parts into the environment of young children.

We have been interested in small parts for a long time now, and decided that the question of whether parents really understand the warnings on package is subject to empirical testing. It is not something that we have to guess about. We are concerned when we go to toy stores, as I did 2 nights ago, we still find toys with labels stating: "Recommended for ages 3 and up."

So, in order to test the public's understanding of these labels, we went to a shopping center in the Baltimore, MD, area to identify

shoppers who had bought a toy for a young child within the past year. We then showed them some toys and labels and asked them some questions.

First, we showed them two toys. These toys were not in boxes, and had no labels on them. They were two red fire engines. We asked the people to assume that they cost the same amount. We also asked them which would they buy for a child between the ages of 2 and 3? One toy was of unitary design—it was just one solid piece. The other toy came into small pieces, pieces that would be classified as small parts under the Consumer Product Safety Commission's regulations.

About one-quarter of the people said that they would inappropriately buy the young child the toy with the small parts. Then we showed these same people age labels. These labels were not attached to toys; they were on index cards.

There were three labels. The first label was the prevalent, "Recommended for 3 and up," label. The second label said: "Not recommended for below 3." And the third label, the most informative label, said: "Not recommended for below three, small parts."

Again, we asked each person to assume that he or she was buying a toy for a child between the ages of 2 and 3. And we asked them: "Would you buy that 2- to 3-year-old child a toy that had the label: 'Recommended for three and up'?" Forty-four percent of the people would inappropriately buy a child 2 to 3 years of age a toy that was labeled, "Recommended for 3 and up."

When we changed the label to, "Not recommended for under 3," it dropped from 44 percent all the way down to 8 percent.

When we showed them the most informative label, "Not recommended for below 3, small parts," 5 percent would buy the toy.

So, merely by modifying the label from the noninformative to the informative, we were able to change what people said about their buying behavior. We could reduce the level of people who would inappropriate buy a toy from 44 down to 5 percent. It is a simple modification. It is a noncostly modification. But it is a modification in the label that is very likely, in our opinion, to save lives.

For those toy buyers who initially said that they would buy the toy with small parts, 76 percent later said they would not buy the toy if it had been labeled, "Small parts." And, as has been discussed already in these hearings, Mr. Chairman, when we asked people why they would make the decisions that they did, the most prevalent reason was that people misunderstood the inadequate labeling.

For the label that said, "Recommended for 3 and up," people commonly thought that that label referred to the intellectual capacity of the child. And what parent or grandparent does not think that his or her child or grandchild is beyond one's chronological age and intellectual capacity?

So, again, by a minor modification to the label itself, we believe that we can very, very seriously reduce the unacceptable current risk to children from choking on small parts.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Teret follows:]

PREPARED STATEMENT OF DR. STEPHEN P. TERET

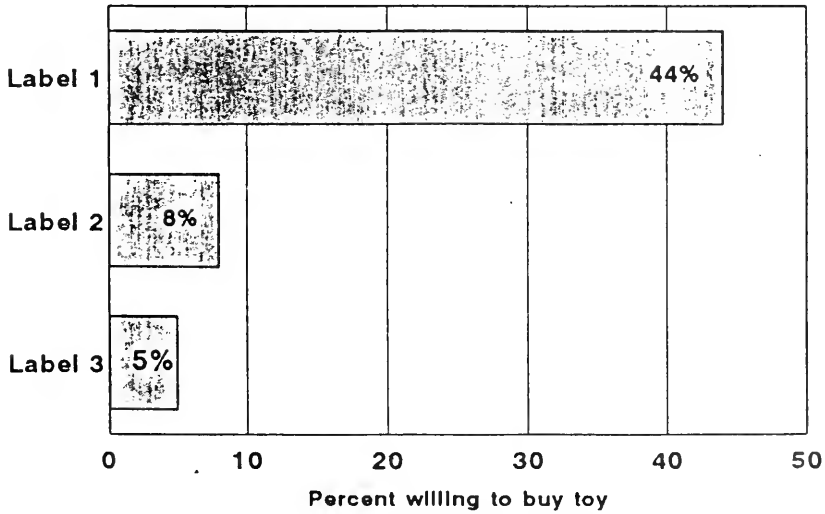
I am Stephen Teret, Director of the Johns Hopkins Injury Prevention Center and Professor of Health Policy and Management at the Johns Hopkins School of Hygiene and Public Health. I also hold joint faculty appointments in Pediatrics and Emergency Medicine at the Johns Hopkins School of Medicine, and am Adjunct Professor at the Georgetown University Law Center.

I would like to address my remarks to the provisions of 5.680 that deal with warning labels on toys with small parts.

The warnings that currently appear on many toys with small parts are clearly inadequate. Labels such as "Ages 3 and Up" do not convey to toy buyers the message that the toy contains small parts that pose a choking hazard to young children.

A survey performed by The Johns Hopkins Injury Prevention Center in a shopping mall in Baltimore, Maryland demonstrated this point. We showed almost 200 toy buyers a series of three labels, each time asking the question "Would you buy a toy with this label for a child between 2 and 3 years of age?" Label I stated "Recommended for 3 and up"; label 2 stated "Not recommended for below 3"; and label three stated "Not recommended for below 3—small parts. The following figure shows what percent of the toy buyers would buy a child under three years a toy with each label.

Willingness to Purchase Toy for a 2 to 3 Year-Old Child by Type of Label



By changing the label from the uninformative positive recommendation to the more informative warning, the percent willing to buy a toy that would be dangerous to its user dropped from 44 percent to 5 percent. This is a remarkable benefit.

Many of the shoppers who would inappropriately buy a toy with the label "Recommended for 3 and up" reported that they thought the label referred to the child's cognitive development.

Attached is a copy of our article reporting on this study, which was published in the Journal of the American Medical Association in June i991. The study was funded by the Civil Justice Foundation.

Children die needlessly from choking on toys with small parts. S. 680 would reduce the likelihood of such deaths. I urge its passage.

["The Impact of Specific Toy Warning Labels," in the June 5, 1991, Vol. 265, of the Journal of the American Medical Association may be found in the committee's files.]

Senator BRYAN. Mr. Teret, we thank you very much for that testimony.

Ms. Feely, we will hear from you next. Welcome to the subcommittee.

STATEMENT OF HERTA FEELY, EXECUTIVE DIRECTOR, NATIONAL SAFE KIDS CAMPAIGN

Ms. FEELY. Good morning, Chairman Bryan. I am Herta Feely, the executive director of the National SAFE KIDS Campaign. Today, I represent not only the campaign, but the Consumer Federation of America, the Consumers Union, the Public Citizen's Congress Watch, and the U.S. Public Interest Research Group. We thank you for the opportunity to express our support for the Child Safety Protection Act, S. 680. And, Chairman Bryan, we commend your continued efforts on behalf of children's safety and health, especially your support for the Federal Fire Safety Act and the Children's Bicycle Helmet Safety Act.

We would also like to recognize a few other Members of Congress, including Senators Gorton and Rockefeller, who introduced the Child Safety Protection Act in the Senate; Senator Danforth, who cosponsored the Children's Bicycle Helmet Safety Act introduced by you; Senator Metzenbaum, who just spoke, who introduced a bicycle helmet safety bill and the Bucket Drowning Prevention Act; and, finally, we would like to thank Senator Dodd and Representative Collins.

The organizations that I represent today have worked to prevent needless deaths and injuries caused by dangerous products for a number of years. We have urged on many occasions the Consumer Product Safety Commission to enforce and strengthen the toy safety regulations, and we have petitioned the Commission to develop a Federal safety standard for bike helmets.

The Commission's response has been to hide behind inadequate voluntary standards while more children die.

I will not repeat what some of the other people have already testified to. A lot of what I had to say would simply be echoing their sentiment. The one thing that I would like to say is that we feel very strongly that the current labels are inadequate. And CPSC did have the opportunity to address this issue and chose to ignore it.

In March, the Commission voted to end a rulemaking process that would have required warning labels on toys containing small parts and intended for children under the age of 6, as well as warning labels on balloons, marbles, and small balls. The rulemaking would have also increased the minimum diameter of small balls intended for use by children under age 3.

As a consequence, we strongly support S. 680, because it would reduce toy-related deaths and injuries by requiring informative warning labels that Steve Teret just mentioned, and it would provide an increased minimum size diameter for balls.

S. 680's labeling approach requires that labels be prominently and conspicuously displayed on the packaging. I think that is a very important point. It also requires that the message contained in the box include the "WARNING" heading and an icon, which is the exclamation mark. These requirements, we want to note, are consistent with the consensus voluntary standard on labeling de-

veloped under the auspices of ANSI, the American National Standards Institute.

This labeling format has been recommended by the Consumer Product Safety Commission expert staff. It is currently being used by corporations, such as General Motors in this flier on drinking and driving. And it has been incorporated into other standards.

The other thing that I would like to talk a little bit more about is the bicycle helmet standard that this bill addresses. In May 1989, the SAFE KIDS Campaign, Consumer Federation of America, and 33 other organizations submitted a petition to CPSC requesting a mandatory bike helmet standard. That petition was denied in July 1991.

I will talk a little bit more about why we feel there is a need for a Federal standard after telling you about the statistics. And I think that they are very compelling. Each year in the United States, approximately 400 children 14 and under die as a result of bicycle-related incidents. In 1990, an estimated 383,000 children were treated in emergency rooms for bike-related injuries—75 percent of all the cyclist deaths involve head injuries.

The dollar costs: about $4.5 million per serious head injury. And the emotional devastation for the 50,000 children who suffer bike-related head injuries and their parents are staggering.

Yet, we know that a solution as simple as wearing a bike helmet can reduce the risk of head injury by 85 percent, and brain trauma by 90 percent. Unfortunately, at this point, as far as we know, only about 5 percent of America's children wear bicycle helmets.

In addition, research has shown that the use of bicycle helmets by children is cost effective, saving about $2 in medical costs for every $1 that is spent on a helmet.

The reasons that we are seeking a Federal safety standard are: No. 1, currently, there are two voluntary safety standards in the United States, and a third voluntary standard is expected to be released this month. But all of these standards vary in their safety criteria.

No. 2, helmets sold in the United States meet a number of international use standards, or, more importantly, they may not meet any standard at all. Even the most well-informed adult can be confused and discouraged by the lack of uniformity in bike helmet safety standards. The Consumer Product Safety Commission staff estimates that 3 percent of helmets on the shelves today do not meet any standard. That is well over 100,000 helmets.

And right now, there is a wave of State bike helmet legislation moving across the country, and with the increase in legislation, more helmet manufacturers are entering the U.S. market and the problem of helmets meeting no standards may increase.

So, again, we support the Child Safety Protection Act, which requires the development of one uniform national standard for bike helmets, which would harmonize existing voluntary standards, require provisions to protect against helmet roll off during a crash, and specifically address the need for special protection for young children's heads.

A Federal safety standard will eliminate confusion and help to ensure that bike helmets purchased will adequately protect both adults and children in the event of a crash.

We feel that through the enactment of this measure, Congress will fulfill a role which the Consumer Product Safety Commission has refused to accept, the role of protecting the health and safety of our country's children.

We applaud the efforts of this subcommittee, and we urge you to support passage of this important child safety legislation.

Thank you.

[The prepared statement of Ms. Feely follows:]

PREPARED STATEMENT OF HERTA B. FEELY

Good morning, Chairman Bryan, and members of the subcommittee. I am Herta B. Feely, Executive Director of the National SAFE KIDS Campaign [1] and I am here today representing the Campaign, as well as the Consumer Federation of America (CFA),[2] Consumers Union,[3] Public Citizen's Congress Watch[4] and the U.S. Public Interest Research Group (U.S. PIRG).[5]

Thank you for the opportunity to express our support for the "Child Safety Protection Act" (S. 680). Chairman Bryan, I commend your continued efforts to reduce the number of children who are seriously disabled and killed every year through preventable injuries—many of which are product-related. Your support for the "Federal Fire Safety Act" (P.L. 102-522), and the "Children's Bicycle Helmet Safety Act (S. 223), clearly illustrate your on-going commitment to children's health and safety.

I would also like to take a moment to recognize other Members of Congress who have made the reduction of childhood injuries an important part of their policy agenda. Senators Gorton and Rockefeller, who introduced the "Child Safety Protection Act" in the Senate; Senator Danforth, who cosponsored the "Children's Bicycle Helmet Safety Act" introduced by Chairman Bryan; Senator Metzenbaum, who also introduced a bicyde helrnet safety bill and the "Bucket Drowning Prevention Act" (S. 799). Finally, I would like to thank Senator Dodd for his continued support of toy safety legislation and Representative Collins for guiding toy and bike helmet safety legislation through the House.

The organizations I represent today have worked to prevent needless deaths and injuries caused by dangerous products for many years. We have been particularly concerned about the senseless deaths and injuries caused to children by toys and the startling number of children who suffer bike-related head injuries each year. We have urged the Consumer Product Safety Commission (CPSC) to enforce and strengthen the toy safety regulations and we have petitioned the Commission to develop a federal safety standard for bicycle helmets. The Commission's response has been to hide behind inadequate voluntary standards while more children continue to die.

TOY SAFETY

Toys are supposed to bring children pleasure and enhance their growth and development, but too often they bring pain and sometimes even death. According to CPSC, at least 31 children have died from toy-related injuries between January 1991 and September 1992 and an estimated 163,000 were injured in 1991. Further,

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[1] The National SAFE KIDS Campaign is a program of Children's National Medical Center in Washington, D.C., and is supported by the Johnson & Johnson Family of Companies. The Campaign is the first nationwide childhood injury prevention campaign. Unintentional injury is the number one killer of children under age 14 in this country. Each year in the United States 8,000 children are killed and 50,000 more are permanently disabled. The Campaign Chairman is former Surgeon General Dr. C. Everett Koop.

[2] Consumer Federation of America (CFA) is the nation's largest consumer advocacy organization whose members include over 240 state, local and national consumer organizations representing over 50 million American consumers.

[3] Consumers Union is a nonprofit membership organization, providing information, education, and counsel about consumer goods and services and the management of family income. Consumers Union's income is derived solely from the sale of Consumer Reports, its other publications and films. Consumer Reports, with approximately 4.9 million paid circulation, regularly carries articles on health, product safety, marketplace economics and legislative, judicial and regulatory actions which affect consumer welfare.

[4] Public Citizen is a nonprofit consumer and environmental organization founded by Ralph Nader in 1971. Public Citizen represents over 140,000 members nationwide. Congress Watch is the lobbying arm of Public Citizen.

[5] The U.S. Public Interest Research Group (U.S. PIRG) is the national lobbying office for state PIRGs across the country. The PIRGs are non-profit, non-partisan consumer and environmental research and advocacy organizations with more than one million members nationwide.

CPSC notes that this data is not all-inclusive and may well be conservative estimates of the number of toy-related deaths and injuries.

The leading cause of toy-related deaths is when young children choke on small toy parts, balloons, marbles and small balls. Choking was the cause of nearly half (14) of the toy-related deaths between January 1991 and September 1992—all to children under age 3. Over 200 children have choked to death in this tragic way since 1980.

These choking injuries and deaths continue to occur because the current CPSC regulations do not address all of the choking hazards posed by toys. Every year, children choke to death on toys that comply with the current regulations. Clearly, these regulations must be strengthened.

S. 680 would help to close many of the gaps in CPSC's toy regulations. The Commission's staff addressed these gaps in the CPSC Briefing Package, "Options on Choking Hazards," (December 31, 1991). Unfortunately, on March 18, 1992, the Commissioners voted to reject the recommendations of their own staff and terminated further action on the proposed rulentaking. S. 680 would codify into statute the 1991 CPSC staff recommendations.

Current Small Parts Regulation

In 1979, the Commission issued regulations under the Federal Hazardous Substances Act to ban certain toys and other articles intended for use by children under three which present unreasonable risks of injury because of small parts (16 CFR 1500.18(a)(9)). The regulations took effect January 1, 1980.

The test device for small parts specified in this regulation is a hollow truncated cylinder with an interior diameter of 1.25 inches and a slanted bottom with a depth ranging from 1 to 2.25 inches. If the entire product, or any component which separates during use and abuse testing fits entirely within the cylinder, the product is banned.

The regulations contain exemptions for a number of products often used by children under three, including balloons. Other products such as small balls or marbles are included if they are specifically intended for children under three or are part of a toy or other product intended for children under three.

Despite the growing number of deaths and injuries caused when children choke on toys with small parts, balloons or small balls, there are no requirements for warning labels on these toys. While many manufacturers currently place a label on a toy such as "for ages three and up," toy buyers misinterpret these age labels as developmental recommendations rather than safety warnings indicating a possible choking hazard.

Our organizations believe that informative toy labels which warn consumers of the choking danger posed to young children would help to raise awareness of the hidden choke hazard associated with many toys. CPSC had an opportunity to address this issue and chose instead to ignore it. On March 18, 1992 the Commission voted to end a rulemaking process that would have required warning labels on toys containing small parts and intended for children under age 6, as well as warning labels on balloons, marbles and small balls. The proposed rulemaking would have also increased the minimum diameter of small balls intended for use by children under age 3.

Gaps In Current Regulations

1. Children under age 3 choke on toys that are intended for children over three

A large portion of the toys involved in choking related deaths and emergency room-treated injuries are products appropriate for children three years or older rather than for children under three. Thirty percent of the toys for which an age determination could be made by CPSC were intended for children over three, yet choked children under three.[6] At least 17 children younger than three have died since 1980 when they choked on a toy intended for an older child.

At least twelve children have choked to death on marbles since 1980. Although marbles are exempt from the small parts regulation as toys intended for children older than three, nine of the ten children who died were younger than three. In 1991, for example, an infant choked to death on a marble in a daycare center when she was placed in an area where older children were located.

[6] Of the 186 products that have been involved in choking fatalities since 1980, the Commission was able to determine the appropriate user age of 57 of the products (this does not include balloons, which are exempt from the small parts standard, and balls). Of these 57 products, 17 (or 30 percent) appeared to be appropriate for children over three, yet were involved in the deaths of younger children. CPSC Briefing Package, Options on Choking Hazards, December 31, 1991, p. 63.

2. Children choke on small balls

At least 45 children have choked to death on small balls: over 40 children died between January 1980 and September 1992; five children choked to death on balls between March 1970 and March 1977.[7] In addition, at least 11 more children would have choked to death on a ball. had an observer not removed the ball from the child's mouth.[8]

Children choke on small balls that are larger than the small parts test cylinder. Since 1990, one child choked to death on a small ball slightly larger than the 1.25 inch diameter of the test cylinder, and another child choked to death on a ball about 1.5 inches in diameter that was received as a gift at a birthday party. At least 7 other children have choked to death on balls larger than the test cylinder since 1980.[9]

In 13 of the 40 ball-related deaths since 1980, the size of the ball was known. Seventy percent (9) of those 13 balls were larger than the small parts test cylinder. In other words, they were of the size that our government deems suitable for children under age 3.

Balls intended for children under age three should have a diameter larger than 1.75 inches. Raising the minimum size of balls to 1.75 inches would eliminate all of the balls that have been associated with choking incidents. One 11 month old child choked, but did not die, on a ball 1.75 inches in diameter.[10] A child older than three choked to death on a ball 1.73 inches in diameter. Because CPSC data clearly demonstrates that balls up to 1.75 inches in diameter are capable of choking children under age 3, these balls should be banned.

In addition, the new size requirement for balls should explicitly include beads intended for children under age 3. There is no reason to exempt beads; except for the hole for threading there is no difference between a ball and a bead. A bead is as capable of being mouthed and choked as a ball. CPSC staff has concluded that objects that are round are most likely to be involved in choking incidents and that the elastic membranes can seal around a smooth rounded object more tightly making removal more difficult.

3. Children choke on balloons

Balloons pose a grave choking hazard to children causing more choking related deaths than any other children's product. Almost half of the choking fatalities reported to the Commission from January 1980 to July 1991 involved balloons. At least 76 children have choked to death on uninflated balloons or parts of balloons since 1980. Six children died in this tragic way in 1989 and another ten children choked to death on balloon pieces since 1990.

While children younger than three are at greatest risk from choking hazards, older children are also at risk from choking on uninflated balloons or parts of balloons. Five of the six children who choked to death on balloons in 1990 were at least 3 years old.

Balloons are exempt from the current small parts regulations and are not required to have labels that warn of the choking hazard to children. CPSC's March 1992 decision to terminate rulemaking proceedings on balloons was split, with two of the commissioners opposed to action and Commission Chairman Jacqueline Jones-Smith in favor. Chairman Jones-Smith said balloons contain a "hidden hazard" and noted that the number of choking deaths related to balloons was higher than the number of deaths for any of the other products considered for labeling.

4. Children choke on toys that are larger than the test cylinder

In addition to balls, young children die each year from choking on other toys that technically pass the small parts cylinder test. Although the test cylinder eliminates objects small enough to enter the child's lower throat and air passages, the test fixture does not eliminate objects which can enter the mouth and obstruct the airway by blocking the mouth and upper throat. Therefore, children continue to choke on toys that comply with the law.

In 1987, CFA and the New York State Attorney General's office petitioned CPSC to increase the size of the small parts test cylinder, thereby increasing the size of toys and small parts for children under age 3. In March 1990, CPSC voted against

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[7] CPSC, HIA Hazard Analysis Report, "Injuries Associated With Small Objects," May 1978, at 9.

[8] CPSC, Directorate for Health Sciences, Sharee Pepper, "A Physiological Review of Toys Causing Choking in Children," September 1989, at 7.

[9] CPSC Briefing Package, Options on Choking Hazards, December 31, 1991, p. 63.

[10] This was classified by CPSC staff as a case that would have resulted in death if an observer had not removed the ball from the child's mouth or throat.

the petition to increase the diameter of the small parts test cylinder and directed the Commission staff to develop regulatory options for preventing choking incidents caused by small figures. At that time, the Commission knew of five choking deaths associated with a toy intended for children younger than three and large enough to comply with the small parts regulations: three children choked to death on Fisher-Price Little People [11]—small figures about two inches high by about one inch in diameter, which pass the size requirements of the small parts regulation; one child choked to death on a 4½ inch seal with a ball on its nose; and one child choked to death on a 2½ inch plastic peg from a toy workbench set. Tragically, in the year after the Commission's decision to deny the petition to increase the cylinder, five more young children choked to death on toys that complied with the small parts standard.

Voluntary Standards Are Inadequate

The toy industry is not taking action to address the mounting deaths and injuries that occur when children choke on toys or parts of toys. Although the voluntary standard for toy safety (ASTM 963-91) includes a provision that requires labeling for balloons, the required label is neither prominent nor conspicuous and is not in an appropriately readable format. ASTM 963-91 does not mclude any tppe of requirement for warning labels on other toys that pose choke hazards. In fact, the ASTM toy safety committee has specifically decided to defer action on choking hazard issues. There is no industry effort to increase the minimum diameter size of balls.

Current Age Labels Are Misinterpreted

Current regulations do not require toys for children over three to warn of the possible choking hazard to children younger than three. Because the regulation does prohibit toys for kids younger than age 3 from posing a choking hazard, the label on a toy stating age "3-up" may often be an indication that small parts are included. Yet, few parents realize this. Parents often believe that an age label on a toy that simply states "3-up" amounts to no more than a suggestion pertaining to the intellectual capabilities of the child and do not realize that the toy contains dangerous small parts. Parents of children under three are likely to purchase these toys if they believe that their child could benefit developmentally, emotionally or educationally from playing with the toy or if they consider their child to be more advanced than most children under three. It is clear from surveys as well as anecdotal information, that parents, in an effort to challenge their child or assist their development, routinely purchase toys intended for older children for their younger offspring.

Solution: The Child Safety Protection Act (S. 680)

Children's lives can be saved and needless injuries prevented by requiring toys to be clearly labeled to inform parents of the choking hazard. In addition, the minimum size of balls should be increased so that balls are too large to choke a young child. S. 680 would reduce toy-related deaths and injuries by requiring informative warning labels and an increased minimum size diameter for balls. S. 680's labeling approach, requiring that labels be prominently and conspicuously displayed on the packaging, with the message contained in a box that includes the "WARNING" heading and an icon, is consistent with the consensus voluntary standard on labeling developed under the auspices of the American National Standards Institute (ANSI). This labeling format has been recommended by CPSC expert staff, used by corporations and incorporated into other standards.

Our organizations applaud the subcommittee for your consideration of these important toy safety measures. We also urge your continued vigilance on related toy choking issues, induding the hazard posed by small figures and other parts that pass the CPSC small parts test, yet pose a choking hazard to young children.

BIKE HELMET SAFETY

CPSC's termination of the proposed rulemaking on toys is not the first time the Commission has turned its back on children. In May 1989, the National SAFE KIDS Campaign, the Consumer Federation of America and 33 organizations representing the Campaign's National Coalition to Prevent Childhood Injuries submitted a petition to CPSC requesting that mandatory safety standards for bicyde helmets be adopted. On July 31, 1991 the Commission voted to deny the petition.

[11] In its consumer brochure, Fisher-Price states that "Little People" figures have been associated with seven deaths by choking and one incident resulting in serious injury. The company announced in February 1991 that it had increased the size of its "Little People."

The statistics on bike-related injuries to children are compelling. Each year in the United States, approximately 400 children age 014 are killed in bicycle-related incidents. In 1990, an estimated 383,459 children age 0-14 were treated in emergency rooms for bike-related injuries. Seventy-five percent of all cyclist deaths involve head injuries and seventy percent of all hospitalized cyclists are treated for head trauma.

The dollar costs ($4.5 million per serious head injury) and the emotional devastation for the 50,000 children who suffer bike-related head injuries and their parents are staggering.

Yet we know that a solution as simple as wearing a bike helmet can reduce the risk of head injury by 85 percent and the risk of brain injury by almost 90 percent. Unfortunately, only 5 percent of children nationwide use bicyde helmets.

The National SAFE KIDS Campaign has been working to educate children, parents and caregivers about the importance of wearing bicycle helmets on every ride. The Campaign is also working to insure that the helmet purchased will adequately protect a child or an adult from head injury in the event of a bike crash.

Voluntary Standards Are Inadequate and Potentially Confusing to Consumers

Currently, there are two voluntary safety standards in the U.S. for bicycle helmets—the American National Standards Institute (ANSI) and the Snell Memorial Foundation. A third voluntary standard (American Society for Testing & Materials) is expected to be released in July. All of these standards vary in safety criteria. In addition, helmets sold in the U.S. may meet a number of internationally used standards (British, Canadian and Australian), or may not meet any safety standard at all. Even the most well-informed adult can be confused and discouraged by the lack of uniformity in bicycle helmet safety standards.

We are also concerned that the certification programs currently in practice are not adequate and may jeopardize consumer perception of compliance with the voluntary standards. In particular, compliance with the ANSI standard is a self-certification process. There have been instances where helmets labeled as such have not complied with the ANSI standard (Consumer Reports, "Bike Helmets: Unused Lifesavers," May 1990, pp. 348-353).

CPSC staff estimate that 3 percent of the helmet models on the American market, which would be about 120,000 of the 4 million sold in 1990, do not meet either of the two existing voluntary standards. Inciuded in this group are "hairnet" style helmets which are marketed to bicyclists, but afford little or no protection to the head in the event of a bike crash. This product is advertised as being "worn by professional riders for decades," a statement which is likely to be misinterpreted by consumers to mean the product offers significant protection.

Finally, in the May 1990 report on bicycle helmets, Consumer Reports identified the need to test a helmet's abffity to stay on its wearer's head during a crash as an essential part of a safety standard. A helmet that rolls off, or moves enough to expose vital parts of the head may not protect the wearer. This measure of helmet safety is not addressed by either the ANSI or Snell standards. We do not believe the Commission should rely on the possibffity that this vital testing component may someday be included in a voluntary standard.

Lack of Safety Standard For Children's Helmets

If a consumer is purchasing a helmet for his or her child, an even more perplexing choice is involved. The helmet that fits a child is likely to meet an adult safety standard. Consumers can not be assured that the voluntary standard was one specifically developed to protect a child's head, especially the cranium which is still developing. Currently, one voluntary standard organization (ASTM) is considering the development of a helmet safety standard for infants and toddlers. However, this standard is not expected to be finalized until sometime in 1994. The ANSI and Snell standards are not designed to specifically test children's headforms, a device used to simulate heads in the safety testing of bicycle helmets.

CPSC staff support the need for additional research on children's heads and standards' requirements, noting that "further investigation is needed to determine whether the current adult standards and helmet designs are adequate in providing protection for a child's head," (Staff Briefing Packet, June 17, 1991, p. 293).

A 1992 study conducted by Biokinetics and Associates, Ltd. examined the need for developing a bicycle helmet specifically designed for children's headforms. The study found that current helmets reflect the characteristics of adult heads and recommended that headforms be produced to represent the features of young children. Before CPSC denied the petition for a mandatory safety standard for bicycle helmets, it refiised to delay consideration of the petition until the Biokinetics study was

completed. We believe the Commission lacked adequate information on the testing of children's headforms prior to making a decision to deny the petition.

Solution: The Child Safety Protection Act (S. 680)

S. 680 requires the development of one uniform national standard for bicycle helmets, harmonizing existing voluntary standards, requiring provisions to protect against helmet roll-off during a crash, and specifically addressing the need for special protection for young children's heads. A federal safety standard will help to ensure that the bicycle helmets purchased will adequately protect both adults and children in the event of a crash.

CONCLUSION

Chairman Bryan, we commend you for your continued commitment to the health and safety of America's children. The child safety legislation which this subcommittee is considering will help to mitigate the number of toy- and bike-related injuries and deaths to children. This can be achieved by directing CPSC to require warning labels on toys that pose a choking hazard to young children, to develop a minimum size requirement for balls, and to develop a federal safety standard for bicycle helmets. Through the enactment of S. 680, Congress will fulfill a role which the Consumer Product Safety Commission has refused to accept—the role of protecting the health and safety of our country's children. We applaud the efforts of this subcommittee, and we urge you to support passage of this important child safety legislation.

Senator BRYAN. Thank you very much, Ms. Feely, for your testimony. Ms. Rand, we will hear from you next.

STATEMENT OF KRISTEN RAND, COUNSEL, CONSUMERS OREGON

Ms. RAND. Thank you, Chairman Bryan. I am Kristen Rand. I am counsel with the Washington office of Consumers Union. We are the publisher of Consumer Reports magazine. Today, I am speaking on behalf of not only Consumers Union, but the Consumer Federation of America, Public Citizens Congress Watch, the National SAFE KIDS Campaign, and the U.S. Public Interest Research Group.

It is my understanding that we have a video today which is a segment from Rescue 911, which is a reenactment of a near drowning in a bucket, and we will be seeing that video now.

I will just set up the video by saying that we will see a child crawling toward the bucket, and you should know that there are two adults present, one the mother, one the aunt. They are momentarily distracted in the kitchen. The mother has placed a bucket filled with cleaning water in the bathroom. She shut the bathroom door, but her older child came in and opened the door allowing access by the infant to the bucket.

[Video presentation.]

Ms. RAND. The child that experienced this incident lived, and the estimates are that near drownings like this take place 130 times every year. But 50 times a year, almost once every week, a child drowns in a bucket. And that is why our organizations feel that passage of the Bucket Drowning Prevention Act is extremely important.

Senator Metzenbaum eloquently described what the bill will do, and I have brought a labeled bucket to demonstrate how the Metzenbaum bill would change current labeling. As you can see, on this bucket there is one label near the bottom and it blends in with the rest of the markings on the bucket. The label is the same color as the product markings.

The Metzenbaum bill would require two much larger labels. This label on the bucket is about 3¼ by 3 inches. The Metzenbaum bill would be 7 by 5 inches, one on each side, higher on each side, one in English and one in Spanish. We feel very strongly that it is important that it be labeled in both languages since a very high number of drownings occur in Spanish-speaking households.

In addition, and we think more importantly than the labeling requirements, the Metzenbaum bill would require CPSC to develop a performance standard that would protect against bucket drownings. The performance standard would allow manufacturers to come up with a fix that protects against bucket drownings but would be consistent with the use of the product. Manufacturers would have options, as long as it kept the child from falling into the bucket in the first place. As long as the manufacturers' remedy adequately protected against a child falling into a bucket, it would be acceptable.

We think that congressional action on this issue is absolutely necessary since CPSC has been aware of the problem since 1985. Since that time, over 400 infants have drowned, and CPSC has chosen to do nothing. We are convinced that congressional action is the only thing that will help this growing problem. We, therefore, urge quick passage of the Bucket Prevention Act of 1993.

In closing, I would just like to say that from all of my colleagues in the consumer community, we thank Senator Metzenbaum for his leadership on this issue, and I am sure I speak for all of my colleagues when I say we are very saddened by his announcement of his retirement, but we wish him well. He will be irreplaceable in product safety and child protection.

Thank you very much, Mr. Chairman.

[The prepared statement of Ms. Rand follows:]

PREPARED STATEMENT OF M. KRISTEN RAND

Good morning, Mr. Chairman and members of the Subcommittee, I am Kristen Rand, Counsel with the Washington Office of Consumers Union, the non-profit publisher of Consumer Reports. I am here today representing in addition to CU, Consumer Federation of America, Public Citizen's Congress Watch, the National SAFE KIDS Campaign and U.S. Public Interest Research Group. Our organizations thank the subcommittee for the opportunity to present our views on the serious problem of infant bucket drowning.

Tina Ellis, 22, was hanging a carseat that she was washing on a clothesline to dry. She suddenly realized that her infant daughter had toddled away. She frantically searched for the girl only to find her drowned and completely inside a five-gallon bucket that Ellis had been using for cleaning. The panic-stricken young mother dialed 911, but it was too late, the little girl was dead. Unfortunately, a scenario like this is replayed in American households at least once every week, some toddlers survive but far too many die.

Since 1985, approximately 400 infants have drowned in five-gallon buckets. It is estimated that five-gallon buckets send 130 infants to emergency rooms each year. Bucket drowning presents a greater danger to small children than do poisonings from household products, which kill about 42 children a year. The hazard is magnified by the fact that the product is considered by most to be innocuous; few people recognize that using a five-gallon bucket in proximity to an infant can have deadly consequences.

Although this hazard has been acknowledged by the bucket industry and the Consumer Product Safety Commission (CPSC) for at least eight years, little has been done to prevent bucket drownings. Bucket drowning emerged as a hazard with startling death figures in the mid-1980's, and yet CPSC did nothing to respond. It is difficult to understand how the Commission, which insists it addresses hazards based on a scheme of "risk-based management," can continue to ignore a hazard that has claimed the lives of at least 400 toddlers and continues to kill infants at

a rate of one every week. Is there any other product that presents a risk of such great magnitude?

A staff briefing package on the issue dated February of 1992 has never been transmitted to the Commission. We have to wonder if the Commission simply preferred to avoid consideration of whether to issue an Advance Notice of Public Rulemaking (ANPR) so that it could comfortably rely entirely on industry efforts.

An industry-sponsored campaign to voluntarily label buckets by having consumers call an 800 number to obtain free warning stickers has been ineffectual. In the three years since this effort got underway, very few product manufacturers have voluntarily labeled their buckets.

As was the case with lawn darts and garage door openers, the Commission will do nothing about five-gallon buckets until Congress steps in. Just as it will take an act of Congress to get the Commssion to act on toy labeling and bicycle helmets, Congressional action is necessary if the hazards of five-gallon buckets are ever to be addressed. Moreover, Congress should pass strong bucket safety legislation that will not undermine state efforts in this area.

Therefore, our organizations applaud Senator Metzenbaum's introduction of the "Bucket Drowning Prevention Act of 1993." Passage of this legislation is absolutely critical to reduce the number of children who drown or nearly drown in five-gallon buckets.

The bill would regulate five-gallon buckets in two crucial ways.

LABELING

First, the bill would require the labeling of all five-gallon buckets to warn parents and other caretakers of the drowning hazard they present. The bill would require:

- Two labels, centered on each side of the bucket, with one in English and the other in Spanish. This requirement is essential as fourteen percent of the deaths have occurred in households in which Spanish is spoken.
- Each label to be permanent. Since these buckets are often used to hold liquid to wash cars or mop floors, it is imperative that the labels be resistant to removal.
- Labels to be at least seven inches in height and five inches in width with the wording on the label proportional to the label's size.
- A border surrounding each label in order to delineate it from other printed material that may be on the bucket. This is important since some of the labels currently used blend in somewhat with the product information contained on the bucket (the color scheme mandated by the bill is consistent with ANSI standards).
- The warning labels to contain a pictogram of a child on tiptoes reaching into a bucket with a slash and the signal word "WARNING" and the text, "Children Can Fall Into Bucket and Drown—Keep Children Away From Buckets With Even a Small Amount of Liquid." A pictogram with the universal slash sign and the "WARNING" signal word will help to convey the seriousness of the hazard and is also based on ANSI standards.
- The manufacturer or distributor has to be responsible for labeling. It is extremely important that accountability for labeling be made clear and that responsibility lie at the beginning of the chain of distribution rather than at the end. It is simply easier to ensure compliance by a limited number of manufacturers and distributors rather than a multitude of retailers, fillers or users.

In summary, each of these requirements is essential to ensure that the resulting labels effectively warn users of the drowning hazard associated with five-gallon buckets.

PERFORMANCE STANDARD

Second, but most importantly, the bill would mandate that CPSC commence a proceeding to develop a performance standard for buckets designed to address the drowning hazard to infants. A performance standard is essential to adequately address the risk of injury presented by buckets.

Labeling alone is manifestly insufficient to address the hazard. A performance standard which prevents an infant from falling into and becoming entrapped in a bucket in the first place is the only measure that will be effective. Indeed, CPSC is aware of at least one death in a labeled bucket.

Because the bill would require a performance standard and not mandate a specific design standard, manufacturers would have considerable flexibility to develop a standard that addresses the hazard and that is harmonious with the use of the product contained in the bucket. For example, a manufacturer whose product is poured from the bucket may choose to incorporate a spout that is large enough for the liquid to pour through but too small for a child to stick his head into. One manufacturer has suggested a design that uses a handle that drops down to cover the

top of the bucket, leaving an opening too small for an infant's head (a picture of this design is included with our testimony as "Exhibit A"). Other designs are also possible to achieve the goal of preventing a child's head from fitting into the bucket. Other standards, such as the voluntary performance standard for baby gates [1] have similar requirements to restrict the entry of a child's head. Therefore, development of such a standard by the Commission should be relatively easy to accomplished.

The bill states that the performance standard will be promulgated under section 553 of the Administrative Procedures Act (APA) rather under section 7 or section 9 of the Consumer Product Safety Act (CPSA).

This is important to ensure that a mandatory standard is promulgated in a timely fashion and the Commission is not tempted to defer to an inadequate voluntary standard under section 7 as it has done too often in the past.

Under section 9 of the CPSA, CPSC must engage in a three-stage rule making process which has a history of extremely lengthy rulemakings, with an average of two to four years to complete a rulemaking.[2] The procedures in the APA are much more streamlined and are appropriate in a circumstance such as this where the hazard is so extreme and immediate.[3]

CONCLUSION

The danger of infants drowning in five-gallon buckets is one of the most serious and deadly product hazards to children and yet CPSC and the bucket industry have failed to take steps that would significantly reduce the rates of death and injury associated with this product. Congressional action is necessary if these unnecessary deaths are to be prevented. Therefore, Consumers Union, Consumer Federation of America, Public Citizen's Congress Watch, the National SAFE KIDS Campaign and U.S. Public Interest Research Group strongly support passage of the "Bucket Drowning Prevention Act of 1993."

Thank you Mr. Chairman.

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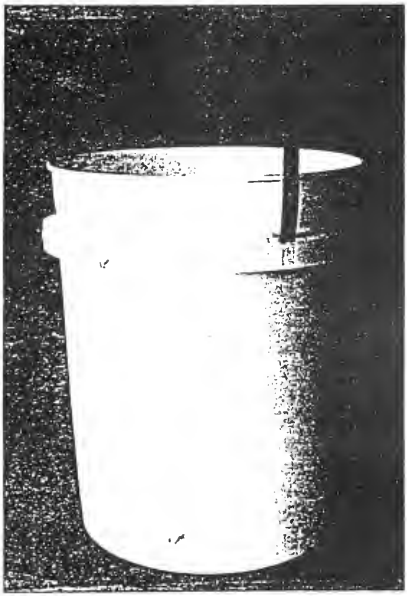
[1] CPSC staff participated in the development of this voluntary standard which uses a template sized to replicate an infant's head dimensions.

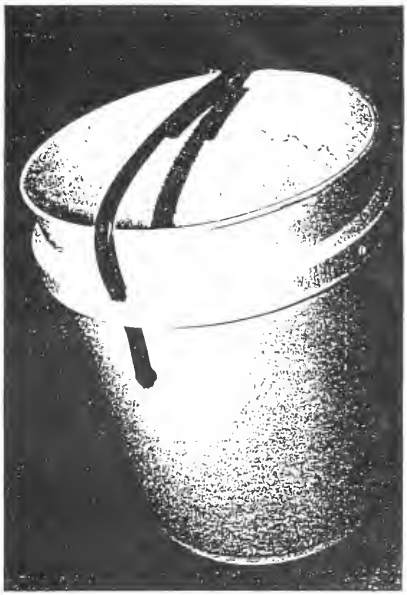
[2] For example, the ANPR on crib toys was published in October of 1990, there is still no determination as to whether to issue a proposed rule. In the case of all-terrain vehicles, the ANPR was published on May 31,1985, the rulemaking was terminated on September 18, 1991.

[3] Congress has mandated promulgation of a standard in this fashion before, in the case of garage doors.

EXHIBIT A



"Free-Swinging" Position



"Toddler-Safe" Position

Senator BRYAN. Thank you very much, Ms. Rand. Before moving that bucket, can I just ask a couple of questions?

Ms. RAND. Sure.

Senator BRYAN. First of all, what is the size? I know the legislation is designed from 4- to 6-gallon containers; am I correct?

Ms. RAND. Yes, this is a 4.5-gallon bucket.

Senator BRYAN. So, essentially, the legislation would deal with buckets slightly smaller than that but up to 6 gallons?

Ms. RAND. Correct.

Senator BRYAN. And would require that the labeling be placed higher?

Ms. RAND. Yes. It is described in the bill as below where the handle insert is, so it would be about like this, and this is a mockup of the label that would be required. This is smaller than the actual label. And this, the slash, would be red. So, it would be more like this. And it would be contrasting, which we think is extremely important. I have had a number of people comment to me that this label just blends right in with the other markings on the bucket.

Senator BRYAN. You also mentioned the requirement to develop a performance standard. Can you cite, for example, a performance standard that not be the one that is ultimately adopted but maybe give some examples of some alternative performance standards that might be considered by the Commission?

Ms. RAND. Well, one would be to change the dimensions of the bucket, although dimensions of buckets in which drownings occur

do vary. So, it would be difficult for me to cite right now exactly what those changes might be. But that would be one option.

Another option that a manufacturer has suggested to us is depicted here. It is not that great of a copy, but it is a handle that would be across the top, and it would drop down when you set the bucket down so an infant's head could not fit in on either side.

So, those are two options, but there are many others that I think you could come up with using common sense.

Senator BRYAN. Dr. Greensher, you cited, I believe initially—this is under a preexisting legislative circumstance that used to exist. I think you cited this as progress.

Dr. GREENSHER. Right. That was progress.

Senator BRYAN. That was the early eighties. That is progress, so that is not particularly relevant to our discussion this morning.

Dr. GREENSHER. No.

Senator BRYAN. It indicates we have made some progress, I think.

Dr. GREENSHER. That was the first recognition of the need and an appropriate label was put on.

Senator BRYAN. This one here, I believe, you cited—I want to be clear for the record—indicating that although we have made progress we have got a way to go, to paraphrase.

Dr. GREENSHER. We do have a long way to go. For one thing, that toy fails the current existing regulations, since it is being sold without any labeling saying that it is not appropriate for under 3. There is no age-appropriate label at all.

Senator BRYAN. Now, we are talking now about—these look like they are plastic jacks.

Dr. GREENSHER. Both the jacks and the ball. The ball is a 1-inch ball that would flunk the current standards, and yet it is being sold freely with no labeling at all.

Senator BRYAN. So, this violates the existing law?

Dr. GREENSHER. Yes it does.

Senator BRYAN. Now, you have had a chance—let me just offer a question to the entire panel for anyone to respond. You have had a chance to look at the bill, and it has obviously been processed through the House. Any comments or suggestions that you might have with respect to its present form? Any changes that you would recommend? Any last minute thoughts you have in terms of any changes you would like to see in the legislation, itself? And I understand you support its intended purpose and you are all very consistent and articulate to that point, but are there any changes that you would ask us to consider at this juncture?

Mr. TERET. Mr. Chairman, I would like first to respond with regard to the labeling portion of the bill for toys with small parts and for balloons and for small balls. I am in total agreement with the content of the bill.

With regard to the bicycle helmet portion of the bill, I would like to offer one possible suggestion which is based upon work done by Dr. Andrew Dannenberg and other members of Johns Hopkins Injury Prevention Center. Should we be trying to regulate the sale of helmets such that every time a child's bike is sold, a helmet is sold with it so that we think of the helmet as being an integral part of the bicycle, albeit detached from the bicycle, but as impor-

tant to bicycle safety as a seatbelt would be to motor vehicle safety?

If we can enhance in some way the likelihood that the helmet would be sold at the time that the bike is sold, perhaps we will see an increase in helmet usage rates and a decrease in head injury rates.

Senator BRYAN. We will be hearing some testimony shortly by some of the industry representatives that expressed some concerns about the triangular label that is required in each of these warnings, some reservations that they will have a chance to speak to in a moment. Let me just get your response for the record, without in any way making a prejudgment. I want to be very clear, I am asking this just so that the record can be clear, not an expression of opinion that the Chair has about its appropriateness.

Your response, if the subcommittee were disposed to remove the triangle, what does that do to the warning, in your judgment? I invite any one of you to comment on that.

Dr. GREENSHER. Mr. Chairman, I think that the message is what we are looking for. There is a great deal of expertise on the size of the labels, on the coloring of the print material that goes with it. I do not think that that is an issue. I think the issue that we would be concerned with is that the message gets across. Whether the shape of the label is triangular or rectangular is more a minor matter.

Ms. FEELY. I would like to add to that the reason we feel strongly that the label with the triangle should be as it is posed in the bill is because there has been a precedent set and there is uniformity to this type of warning label through the American National Standards Institute.

I think that there are certain warning signs that have become universal. The circle with the slash through it, everyone recognizes that as a warning symbol. And so this, too, this type of icon, is becoming universally recognized. That was why I mentioned this particular piece earlier where GM has, in fact, incorporated the icon with the exclamation mark into their brochure on drinking and driving. So, we would very much advocate that we leave it exactly the way it is.

I would like to add that the other piece that I think is critical is that the warning label be as conspicuous as possible. I am a mother of a 3-year-old and a 5-year-old boy and I go to the stores all the time, and if those labels are not easily visible we are going to miss it and we are going to miss an opportunity to protect a young child.

Senator BRYAN. You anticipate my next question, because one of the other concerns that has been raised is does it have to be on the front panel? Can it be on the side?

Ms. FEELY. I think it needs to be on the side that is most visible as it is being placed on the shelves.

Ms. RAND. And I would add to that that under the Federal Hazardous Substances Act regulations require labeling on the primary display panel and any other panel that functions as the primary display panel, and that we think it is inappropriate to create a special exemption in this case from those regulations.

Ms. FEELY. Furthermore, we feel it is important to include it inside on any instructions that accompany that particular toy, because that way we have a second opportunity to reach the parent or the person who is taking care of that child; an opportunity to see the warning symbol and the warning sign.

Senator BRYAN. Ms. Feely, I think you made the comment that the triangle now has a universal recognition, and that makes the point, I guess, that Dr. Greensher was saying, that the most important thing is the message. Some folks understand that there are some dangers involved from the standpoint of the safety of the child that may be involved, and your point is that the universality of the triangle itself helps to focus attention that there is a warning, something that someone ought to read and to be conscious of.

Ms. FEELY. Yes.

Ms. RAND. I think if you look at this, this is the bucket warning. But if you notice the triangle, it really does help to grab your attention.

Senator BRYAN. Now, I am told, Ms. Rand, that the bucket industry itself is proposing a label like that. They will certainly have an opportunity to respond if I have incorrectly stated for the record their position. Does this type of label comport with your understanding of what is needed, recognizing that there is a size, I believe that you have indicated, in Senator Metzenbaum's bill that the size dimension is 5 by 7, which would be larger than at least one of the illustrations that you gave us, but essentially in terms of the format?

Ms. RAND. It is close. But as you can see from this mockup, the coloring of the wording or the slash would be red, which I think is the more universally recognized slash color. And if you also notice in this one the child is shown actually toppling into the bucket. This appears to warn not to let your child reach in. This conveys more the danger of the child toppling in, I think, and once again, size is important, as is the bilingual labeling.

Senator BRYAN. As well as, I take it from your previous testimony, the location.

Ms. RAND. Yes.

Senator BRYAN. Are there any other comments the panelists would like to make, either in response to questions that I have asked or something that perhaps the record needs to be supplemented with? Dr. Greensher.

Dr. GREENSHER. Yes. I would like to add a particular warning that would be appropriate to balloons. Balloons, because of their flimsy nature, are so configured that when they get into an air passage they totally block the passage and make it very difficult to extract. You have a filmy mass inside.

Unless you have a bronchoscope handy for it there is very little that you can do even in an emergency room setting to relieve the obstruction of these things. So that is a particularly onerous type of choking situation and something that we need to pay particular attention to.

Senator BRYAN. Now the balloon warning, as proposed in the legislation, "Children under 8 can choke to death on uninflated or broken balloons, adult supervision required. Keep uninflated balloons

from children. Discard broken balloons at once." Now, that makes a lot of sense. Most people, I think, can understand that.

Share with me, and perhaps Mr. Teret, you may, because of your own extensive research into this—I am not sure how balloons are sold. My recollection—it has been a long time since I have purchased one—is that they do not come packaged, that they are oftentimes lose. And I may be incorrect.

Mr. TERET. I believe they come both ways, Senator Bryan. I think children encounter balloons in every possible form, in packages that come from stores or individual balloons that are blown up at birthday parties. I think that the problem is inherent in the product itself. I do not think that the labeling will solve the problem entirely, but I think the labeling is necessary to do whatever we can to reduce the problem.

Senator BRYAN. I guess my question was more on the lines of I guess they are all packaged now. But if you are looking in a bin that has balloons, you know, different colors, and picking them out, an uninflated balloon does not lend itself to a warning. I mean, no matter where you place it there is no front panel, side panel, back panel, no matter what the dimensions may be. These tend to be very, very small unless they are large balloons, but when they are uninflated you really cannot see anything.

Are you suggesting in this legislation that balloons must be packaged? And obviously, the package itself could be designed so that the label would be highly visible. Or does the legislation go that far?

Dr. GREENSHER. The legislation does not go that far, but if one wanted to really address this issue then either the packaging or the container dispensing it at the store would have to be particularly labeled with a special hazard warning.

Senator BRYAN. I understand where you are coming from, Dr. Greensher, and then you have got at least a level of responsibility that goes beyond the manufacturer in the sense that it will then be incumbent upon the retailer.

Dr. GREENSHER. The retailer and the purchaser.

Senator BRYAN. Now, the retail display, then, must have a label under this legislation, so I guess that addresses in part the concern. But again, the manufacturer with the best of intention can send out all of the information that is required to the retailer. If the retailer does not display it in conformity with the law, namely to have the label on the bin, I guess the best of intentions may miscarry it.

Dr. GREENSHER. Obviously, the ultimate solution would be to fabricate balloons out of materials that are not so flimsy, and that is taking place to a great extent.

Senator BRYAN. Any other comments you would like to make?

Well, let me express my appreciation to each of you for your thoughtful testimony, and as I have indicated, your full statements will be made a part of the record. Thank you very much.

Our second and final panel will consist of Mr. David A. Miller, who is president of the Toy Manufacturers of America; Mr. Peter Eio, who is the president of LEGO Systems; Mr. Daniel A. Flynn, the chairman of the Balloon Council, and Mr. Warren Stickle on behalf of the Coalition for Container Safety.

Let me again, as you are taking your seats, for the record state that your full testimony will be made a part of the record, and I would ask you to highlight those points that are most important for the subcommittee to make note of and try to confine your remarks to 5 minutes.

Mr. Miller.

STATEMENT OF DAVID A. MILLER, PRESIDENT, TOY MANUFACTURERS OF AMERICA

Mr. MILLER. Thank you very much, sir. My name is David Miller. I am president of Toy Manufacturers of America, an organization that is made up of 235 manufacturers and importers. Our members account for 85 percent of the $15 billion toy industry. I have been in the toy industry myself for over 25 years, 21 as an owner of a toy company.

We support the spirit and the essential elements of S. 680, although we will suggest today several modifications which we believe will improve the legislation.

Our interest in toy safety is as great as that of the Congress. First, making safe toys is good business, and if you do not, the record is clear, you will go out of business. Second, and equally as important, it is just the right thing to do.

In that context, Mr. Chairman, I would like to address several of the issues in my written testimony. First, I would like to introduce into the record a chart, a 1-page chart. And if you would like, I will bring it up.

Senator BRYAN. If you just remain seated there, Mr. Miller, for the record we will include that chart that you request. What page is that on your prepared testimony?

Mr. MILLER. This is a new chart, one that we have done subsequently.

Senator BRYAN. It will be made a part of the record.

[The information referred to follows:]

Existing and Proposed State Small Parts Warning Label Legislation

[As of June 29, 1993]

State	Bill no.	Age grade regulated	Warning label	Placement
Arizona	HB-2370	3 to 7	Warning: Small Parts Pose a Hazard to children Under 3 Years of Age.	Toy or package.
Arizona	HB-2370	3 to 7	Warning: Small Parts Pose a Hazard to children Under 3 Years of Age.	Toy or package.
California	AB-2153	Any toy—under 10	Warning: Contents Include Small Parts Which Pose a Hazard to Children Under 10 Years.	Conspicuous and legible in contrast by typography layout or color, pursuant to 16 CFR 1500.121(c)(2). Any panel other than bottom or back.
Connecticut	Gen. State. 21a—337(10).	3 to 7	Warning: Small Parts Pose a Hazard to Children Under 3.	Conspicuous pursuant to 16 CFR 1500.121(c)(2). Any panel besides back or bottom.

Existing and Proposed State Small Parts Warning Label Legislation—Continued

[As of June 29, 1993]

State	Bill no	Age grade regulated	Warning label	Placement
Massachusetts ..	H–3514	3 to 7	Warning: Unsafe for Children Under Age 3. Small Parts Pose Choke Hazard.	Prominent and conspicuous on toy or package.
New Jersey	S–1332	3 to 6	Warning: This toy has small parts—Keep away from children under three years old.	Prominent and conspicuous; package, descriptive materials and retail display bin or container.
New York	A–6974	Any toy—all ages .	Caution: Toy Contains Small Parts Which May Present a Choking Hazard.	Conspicuous.
Oregon	S–702	Any toy—all ages .	Warning: Unsafe for children under age 3. Small parts present choke hazard.	Prominent and conspicuous on package and descriptive material.
Virginia	H–2345	3 to 7	Warning: Small parts pose choke hazard to children under the age of three.	Conspicuous pursuant to 16 CFR 1500.121(c)(2); principal display panel.

Mr. MILLER. It really is a better summary of the existing State regulations that are either proposed or, in the case of Connecticut, enacted.

Senator BRYAN. Mr. Miller, do you have an extra copy of that?

Mr. MILLER. I have about 15, sir.

Senator BRYAN. You can just go right ahead. I do not mean to interrupt your testimony.

Mr. MILLER. What the chart shows are the differences between proposed and passed regulations in eight different States, and it is a graphic way of demonstrating the dilemma that we face as a toy industry. And, to be frank, it is one of the reasons that we are supporting S. 680, hopefully as modified by this committee.

The differences in the ages that are covered under these proposed laws, and the warning labels themselves, vary in such ways that compliance with the individual State laws would make it virtually impossible to label a toy intended for a child over 3 containing small parts.

Accordingly, we are asking your committee to place explicit preemption language in the proposed law. Some of the interested parties have suggested that our proposed language is too broad, and that appears in my testimony on page 3. We believe that it is as narrow a preemption as can be drawn, and in looking at the testimony let me quote, on page 3, the preemption provision we are talking about.

It is narrowed to relate only to, "cautionary labeling of small parts hazards in any toy," and what it does is reserve labeling of this type to the Congress and the CPSC. There is no intention to go further, there is no hidden agenda, and we earnestly request that you place a preemption provision in of this type.

Second, I would like to talk about the labeling format. We believe it should be modified to conform with the Federal Hazardous Substances Act and the CPSC guidelines in terms of the label itself. And that is a shorthand way of saying that we oppose the line box and the triangular warning signal.

I think there is a bit of misunderstanding, at least as I heard in the previous testimony. That triangular warning is an unknown warning. It has not been used in the past. It was first introduced in a voluntary standard put forward by the electrical industry, and to the best of our knowledge it was not designed for toy consumer products. The voluntary standard itself indicates that it is not meant as a replacement for any other standard in existence, Federal or voluntary.

Second, I would like to point out that in Dr. Teret's article and in the survey that he did, of those 200 people who were surveyed all but 5 percent would not buy a toy for a child under the age of 3 that was labeled in the way that toy companies are presently labeling, and that is without a box and a triangle.

In addition, toy company compliance with this kind of notice is getting better as time goes along. We do some surveys ourselves. The Federal legislation would mandate it, but to lock in manufacturers to a cumbersome way of getting across a message effectively is really unfair, especially if it affects the competitiveness of an industry that is world dominant.

Finally, as far as labeling format is concerned, this type of labeling has some environmental overtones. The Conference of Northeastern Governors has put forward model legislation which we support that mandates a 50-percent downsizing of packaging for consumers, including toys, by the year 2000. Given this kind of labeling which can be accomplished in other ways, we certainly are making it much more difficult and we are creating a kind of packaging clutter that really is unnecessary.

In our testimony and in the testimony of Lego, you will find great detail with respect to the positioning of the notices and the actual language itself, and in the interest of time I will pass up commenting on it.

However, there is one other point I would like to make. And that is that the implementation date of the legislation is not practical given the worldwide production of toys that is prevalent in our industry. In fact, in Connecticut there has been chaos because of the narrow window to modify packaging and comply with the Connecticut law. And, in fact, there may be several toy companies which will not ship their product into Connecticut for this Christmas. We need 1 year from the enactment of a law in order to comply. The bicycle helmet manufacturers, for any new regulation, will be given that opportunity and, at a minimum, 9 months on existing regulations.

A last small point—the CPSC staff, in suggesting dimensions for small balls, recommended 1.68 inches not 1.75. It is a small difference, but there are testing modules that have been used by the industry with the support of the CPSC for many years. There is only one death, and that under questionable circumstances, between 1.68 and 1.75 inches over this long timespan, and we would suggest that this be modified to give economies to those testers.

Thank you very much, Mr. Chairman.
[The prepared statement of Mr. Miller follows:]

PREPARED STATEMENT OF DAVID A. MILLER

Thank you for the opportunity to appear before your Committee and provide these comments to you.

My name is David A. Miller, President of Toy Manufacturers of America, Inc. (TMA). TMA, located at 200 Fifth Avenue, New York, New York, is a Not-For-Profit trade association composed of 235 manufacturers whose aggregate sales at retail exceed $15 billlon annually. TMA's annual American International Toy Fair is held in New York City in early February of each year and is recognized as the leading trade show for toys, games and Christmas ornaments in the world. Our membership is national and TMA members have permanent offices, manufacturing/warehousing facfflties and employees throughout most of the United States and in many parts of the world. Many of our members have subsidiaries in Europe and in other countries. The American toy industry dominates the world in creation, safety and engineering, marketing and global competitiveness. Our industry provides an example of how to compete in the global marketplace. Our success is reflected in comparatively strong industry growth even in recent recessionary times.

TMA submits these comments in substantial support of bill S-680, introduced by Senator Slade Gorton and Senator Jay Rockefeller, requiring the Consumer Product Safety Commission (CPSC) to implement labeling regulations for certaih toys containing small parts intended for use by children ages 3 to 6 and for balloons, small balls and marbles.

TMA supports small parts hazard warning labels on certain products intended for children over three, but opposes the specific warning design proposed in the bill. This support, in part, is driven by the industry's need to secure the strongest possible federal preemptlon of warning label requirements.

1. *The Need for Stronger Preemptive Language.* The real possibility of enactment in different states of multiple, conflicting and different small parts hazard warning labels for older children's products would undermine the ability of members of TMA to sell their products in interstate and foreign commerce. Last year, four states proposed small parts hazard warning legislation and one state, Connecticut, enacted legislation.[1] This year, three additional states have proposed such legislation.[2] These state bills differ in their definition of a small part, the age group of older children's products to which the states' statute apply and the specific form and content of the labels to be applied. If the toy industry, indeed any industry, is to survive and prosper, let alone maintain its dominant position in the world, it must be able to label the products it distributes in interstate and foreign commerce with a single uniform label. Requirements for affixing that label, the label content, form, or placement on the products and packaging to which the label is applied should be preemptively determined so that no state or local subdivision thereof can vary them. It is my firm opinion that to the maximum extent possible TMA's members who produce products for national and international distribution should be required to comply only with a single uniform national labeling requirement. The preemptive provisions of any small parts hazard warning labeling bill must be total and absolute and preclude the enactment of different state requirements. This is consistent with the strong preemptive philosophy which underlies the enactment of the existing preemptive provisions of the Federal Hazardous Substances Act pursuant to which most regulations affecting toys are promulgated (Congressional Record, 56147-8, April 28, 1976).[3] TMA therefore suggests that the strongest possible preemption be secured for any labeling requirement imposed by this legislation and that the following be added to the bill as Section 4:

SECTION 4.—PREEMPTION

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[1] New York (A6178); New Jersey (S1332); Massachusetts (H1869) and Oregon (SB-553). Connecticut enacted General Statute 21a-337(10).

[2] Arizona (HB 2370), Virginia (H-2345) and California (AB-2153).

[3] It was stated by Senator Moss:

"A major component of this legislation is the establishment of a strong federal preemption in the consumer product safety area unless state or local government can show specific need for having a varying and higher standard. The purpose of having strong federal preemption is to remove some of the burden from business of government regulation. All too often, a business must comply not only with federal requirements, but also with specific, varying standards promulgated by state or local governments. While there are some circumstances where a state or local requirement may be warranted, it is my firm belief, that to the extent possible, manufacturers who produce products for a national market should be required to comply with only national standards."

It is hereby expressly declared that it is the intent of the Congress to supersede any and all laws of the States and political subdivisions thereof insofar as they may now or hereafter relate to cautionary labeling of small parts hazards in any toy, game, marble, small ball or balloon intended or suitable for use by children which differs from the requirements or exemptions of this Act or any regulations or interpretations promulgated pursuant thereto. Any law, regulation or ordinance purporting to establish such a labeling requirement shall be null and void.

Section 18 of the Federal Hazardous Substances Act (FHSA) does contain preemptive language for regulations of the Commission established to protect against a risk of illness or injury associated with a hazardous substance. With certain stated exceptions, states are precluded from establishing requirements "applicable to such substance and designed to protect against the same risk of illness or injury unless the requirement is identical to the requirement established under such [Commission] regulations."

The need for stronger preemption arises because the risk of injury being regulated is partly defined by reference to the age of the toys intended for use by older children. The bill before you requires labeling on certain products intended for use by children who are at least 3 years old, but not older thah 6 years, if they contain small parts as defined by the Commission Section 2(a). In *Toy Manufacturers of America* v. *Blumenthal,* 986 F. 2d 615 (1993), the Second Circuit Court of Appeals held that a CPSC regulation governing toys intended for one age group does not preempt state regulation intended for a different age group with respect to the same risk. Arguably then, under this ruling, while S-680 may preempt a state regulation of toys intended for children ages 3 to 6, it may not preempt different labeling requirements imposed by the states on toys intended for children older thah 6. Oregon's proposed bill (SB 702) would apply to toys intended for children of any age containing a small part and require a different label, i.e.:

"WARNING: unsafe for children under three. Small parts present choke hazard."

New York would apply its labeling requirements for toys intended for children up the age of 14.

It is essential, therefore, that federal small parts hazard warning labeling requirements totally preempt the states in any manner or form from enacting different requirements for different age groups. The language we have submitted, if added to the bill, would provide such protection.

2. *Labeling Format, Placement and Language.* TMA has always questioned the need for and desirability of congressional micro management of issues before the Consumer Product Safety Commission. We do so again today in addressing some of the specific labeling provisions of this bill. The labeling provisions require an unnecessary and meaningless symbol consisting of a trinngle with an exclamation point placed inside it. To repeat, this symbol is meaningless and unknown to almost everyone. The labeling requirements of the bill require borders and boxes contrary to the prescriptive rules for labeling required by the Consumer Product Safety Commission (See 16 CFR 1500.121 and the discussion in 49 FR 50374, Dec. 28, 1984). The result will inevitably be packaging clutter and an unnecessary increase in the amount of packaging space that must be devoted to the warning label. Existing regulations of the CPSC specifically negate the need for lined boxes, requiring only that cautionary material be blocked together within a square or rectangular area with or *without* a border (16 C.F.R. 1500.121(b)(2)(ii)—emphasis supplied).

One of our members, Lego Systems, Inc. (LSI), testifying here today, will dramatically illustrate the unnecessary and burdensome costs and the potential for increase in size of packaging which will be required if S-680 is enacted in its present form. TMA recommends that this Committee adopt the approach which has been taken by Connecticut to simply require that the product include the signal word "WARNING", together with a statement that the product contains small parts which present a hazard to children under 3.

The toy industry, acting in response to source reduction legislation proposed by the Coalition of Northeastern Governors (CONEG), is attempting to reduce packaging size. CONEG is a regional association of governors of 11 states who have proposed Model Packaging Reduction legislation intended to achieve the overall goal of at least a 50 percent reduction in solid waste in the northeast by the year 2000. TMA members are endeavoring to reduce packaging size while, at the same time, developing single packaging for their products which are distributed in interstate and foreign commerce. Some members' products are in packages bearing as many as a dozen different languages and any label required to appear on these packages would be reproduced a dozen times in different languages. Packaging clutter which will be the inevitable result of the unnecessary labeling provisions of this bill—a

symbol, surplus language, boxes, space and border requirements will inevitably interfere with the development of reduced size single product packaging and may even minmize the effectiveness of the message sought to be conveyed.

TMA further supports the testimony of Peter Eio, the President of LSI, urging greater flexibility in placement of the required label. LSI has urged that as an alternative to principal display panel placement, the label be conspicuously placed on a panel other than the bottom or back face of the package. This is the approach which has been adopted in the State of Connecticut and, in the opinion of TMA, will not unduly burden the American toy industry or its international competitors.

3. *Requirement for Small Balls.* The bill proposes to ban small balls intended for children under 3 which are less than 1.75 inch in diameter and to require labeling of such balls in products intended for children over age 3 to approximately 6. Consistent with my earlier expressed belief that Congress should not micro-manage the Commission by legislation, if this Committee is inclined to impose such a ban and labeling requirement, I submit that the actual dimension should be left to the discretion of the Commission. The staff briefing package recommending the imposition of a ban on certain small balls and the labeling of balls intended for children over the age of 3 did not specify the size of the balls which should be subject to these regulations. The Advanced Notice of Proposed Rulemaking (ANPR) published in the Federal Register of June 26, 1990, discussed the possibility of establishing a minimum diameter ranging from approximately 1.68 to 1.75 inch for children's balls which are not part of a game or skill or which are part of a toy or other article intended for children younger than 3 years of age. It did not fix such a minimum diameter and I submit therefore that it is not appropriate for the Congress to fix it. Rather, the Commission should be directed to establish such diameter and requirement in any final rule which it is directed to adopt. TMA's voluntary standard currently fixes a minimum diameter for small balls intended for children under the age of 3 at 1.68 inch.

4. *A Since Prescriptive Label for Toys, Games, Marbles and Small Balls—A Separate Label for Balloons.* TMA further believes that a single prescriptive label should suffice for labeling toys, games, marbles and small balls. A possible exception exists for balloons which, under the provisions of TMA's voluntary standard, ASTM F963, contains the following warning requirement:

"WARNING:

"Uninflated or broken balloons could be a choking or suffocation hazard, especially for infants and children.

"Adults should inflate balloons and supervise their use with children under eight (8) years.

"Discard broken balloons immediately."

TMA recommends adoption of this warning label for balloons.

5. *Effectiveness and Lead Time.* TMA members design, create and produce their toys throughout the United States and in various other countries of the world. Any uniform, prescriptive labeling requirement once adopted should allow manufacturers sufficient time to change their packaging without disruption of the process of orderly distribution in the market place. TMA suggests a minimum of one year from the adoption of any national labeling requirement. It is also important to consider the marketing cycle for the production, shipment and distribution of toys when adopting uniform label requirements. Most toys sold in a current year are generally produced during the first eight or nine months of the year and shipped beginning in the month of June and continuing through the months of October and November. Approximately 60 percent to 70 percent of all toys sold in the year are sold in the last quarter of each calendar year. New models of toys are introduced and shown in early February at the American International Toy Fair.

The CPSC, having promulgated regulations for the safety of a variety of different types of toys, is well aware of this marketing cycle and should be allowed discretion to permit the orderly implementation of any prescriptive labeling regulation.[4] Moreover, any labeling requirement should be applied to goods *which are manufactured and enter interstate commerce after the effective date.* See, for example, the small parts regulation 16 CFR 1501, et seq. published at 44 FR 34892, June 15, 1979 and the discussion in the Federal Register as to the effective date. TMA has provided such language in its proposed bill.

The bill before this Committee providing for regulation of bicycle helmets (Sec. 4) expressly recognizes the requirements of adequate lead time for a new regulation so as not to disrupt the orderly process of distribution. The lead time allotted for

[4] Small parts—16 CFR 1501; electrically operated toys—16 CFR 1505; rattles—16 CFR 1510; pacifiers—16 CFR 1511; bicycles—16 CFR 1512; labeling art materials for chronic health hazards—16 CFR 1500.135; lead in paint—16 CFR 1303.

compliance with the requirements of an existing voluntary standard for bicycle helmets is 9 months, while any future rule under the Consumer Product Safety Act prescribing a standard for bicycle helmets is one year after the date it is issued. In all fairness, the same latitude should be allotted to any new labeling requirements imposed on the toy industry.

For all of the foregoing reasons, TMA urges the Subcommittee to adopt the modifications which we have proposed.

Senator BRYAN. Thank you very much, Mr. Miller. Mr. Eio, we are delighted to have you here with us, and your good Senator was saying some very nice things about you, as I am sure you heard.

STATEMENT OF PETER EIO, PRESIDENT, LEGO SYSTEMS, INC.

Mr. EIO. Thank you, Mr. Chairman, and committee members. My name is Peter Eio. I am president of Lego Systems, Inc., and we are gratified to have the opportunity comment on Senate bill 680.

We at LSI support the enactment of Federal toy labeling legislation. However, there are certain aspects of S. 680 which we believe are unnecessary to achieve the bill's purposes, and which will impose a substantial burden on our company and many other American toy manufacturers.

Before commenting specifically on the bill, we want to provide you with some background information on our company. Lego Systems, Inc., is the North American marketing and manufacturing arm of the Lego group of companies. At our facilities in Enfield, CT, we manufacture approximately 90 percent of the Lego branded products sold in the United States and Canada. We employ nearly 1,300 people between our Connecticut headquarters and field sales operations.

Lego branded products have been universally acclaimed for their educational value and their ability to stimulate the creative processes of our children. We are proud of our reputation for making stimulating and safe toys which give children great pleasure and allow expression of their natural creativity.

Most significantly, in the light of this pending legislation, Lego branded products contain small parts. In fact, they contain almost nothing but small parts. Last year, the Lego group distributed nearly 100 million sets worldwide, and those sets contained approximately 12 billion pieces. As Senator Dodd mentioned earlier, our toys are in now approximately 70 percent of American households with children under the age of 14. We have been distributing this products for over 20 years, yet I am not aware of a single incident of a young child choking to death on one of our small parts.

Nevertheless, we have recognized that parents are often unaware that age grading displayed on our packaging serves a safety purpose as well as an indication of developmental appropriateness. Lego Systems, Inc., has been including a message alerting parents to the presence of small parts since it began marketing toys in the United States in 1973. In fact, we have been frequently praised as a leader in the area of toy safety, and our labeling was held up before the Connecticut General Assembly as an example when our home State enacted the Nation's first small parts labeling law.

In light of the probable enactment of the North American Free Trade Agreement, we are currently planing on assuming responsibility for manufacturing and distributing Lego branded products in Mexico, the world's seventh largest toy market. Lego products

are currently manufactured for Mexican distribution by our European affiliates.

With this background, I would like to proceed to point out several aspects of the Senate bill which will cause Lego Systems, Inc., substantial harm, and may force us to abandon our plans to produce Lego toys for the Mexican market here in the United States.

First, I would like to deal with the principal display panel placement. Although S. 680 does not explicitly state that the required warning label must appear on the principal display panel, the bill does require that the label be prominently displayed, and the word "prominently" has been defined by regulations issued under the Federal Hazardous Substance Act to require placement on the principal display panel.

Placing the required warning on the principal display panel will impose a significant burden on our company. The Lego group uses the same principal display panel graphics on its products worldwide. We have eliminated all text from the principal panels to allow for universal acceptance in over 135 countries in which our products are distributed. Any written text which may be required in specific countries is located on other packaging faces, which may be more readily modified.

Placement on the principal display panel becomes even more problematic in light of our plans to begin manufacture and distribution for the Mexican market. And in order to make this venture worthwhile, we are in the process of developing trilingual North American packaging for the United States, Canada, and Mexico, and this will appear in French and Spanish, as well as English. And, therefore, a requirement of principal display panel labeling will result in a substantial portion of that panel being occupied by warning messages in three languages.

To illustrate what effect this would have, I would like to show you one of our smallest boxes with the warning label required by S. 680. We estimate that the initial cost of designing special North American packaging as being in excess of $350,000. Furthermore, about one-third of our product assortment is newly introduced each year and, as a result, each year we will need to design special North American packaging for these items at an ongoing cost in excess of $120,000 a year.

At a time when we are trying to boost the competitiveness of American companies to compete in the global market, it is counterproductive to impose burdens on those companies which will not be experienced by our foreign competitors. For example, rather than move production for the Mexican market to Connecticut, the Lego group could continue to provide Mexico with its international packaging produced in Europe and avoid the considerable expenses imposed by this legislation.

As an alternative to principal display panel placement, we suggest requiring the label to be conspicuously placed on a panel other than the bottom or back face, and this is the approach which has been adopted in Connecticut. And we have here the same warning on the side of the package.

This requirement for Connecticut will take place in effect from October 1 this year, and we believe such conspicuous placement

will certainly accomplish the bill's purpose of alerting parents to the presence of small parts without imposing an undue handicap on the American toy industry's international competitiveness.

The bill also requires that warning appear not only on the product's packaging but also on descriptive materials which accompany the toy. While this phrase is not defined, we are concerned that it can be interpreted to include the building instructions included in our sets. As you may be aware, we include building instructions to help children build the models shown on the principal panel. These instructions are purely pictorial, and they do not include any text in any language. Again, this permits worldwide distribution, while also recognizing that young children learn best visually. And I have, Mr. Chairman, examples of those which I can distribute afterward. Requiring a warning label on building instructions would also require separate, North American versions as a very substantial cost to the company.

I would like just to summarize, Mr. Chairman, the points. In my written comments I have addressed the issues of preemption, which Mr. Miller raised, and the wording and configuration of the warning, and also the effective date of this legislation. Rather than discuss these points further, I would like to refer you to my written comments and concur with the statement that Mr. Miller has just made.

In summary, I would like to stress four key points. Principal display panel placement will have an adverse effect on international competitiveness for American toy companies. Point 2, we strongly recommend adopting the guidelines for warning text already passed by the Connecticut Legislature and now implemented by toy manufacturers.

Point 3, we urge that the Senate should permit exemptions for descriptive materials, mail order, and education sales as outlined in our written testimony. And in conclusion, we call your attention to the problems which would inevitably result from conflicting State labeling laws, and request inclusion of clear preemption language in this bill.

Thank you for your attention.

[The prepared statement of Mr. Eio follows:]

PREPARED STATEMENT OF PETER EIO

LEGO Systems, Inc. is gratified to have the opportunity to comment on Senate Bill 680, the "Child Safety Protection Act". We at LSI support the enactment of federal toy labeling legislation. However, there are certain aspects of S. 680 which we believe are unnecessary to achieve the bill's purposes, and which will impose a substantial burden on our company and many other American toy manufacturers.

Before commenting specifically on the bill, we want to provide you with some background information on our company. LEGO Systems, Inc. is the North American marketing and manufacturing arm of the LEGO Group of Companies. At our facilities in Enfield, Connecticut we manufacture approximately 90 percent of the LEGO branded products sold in the United States and Canada. We employ nearly one thousand people at our Connecticut headquarters, and employ a sales and merchandizing force of another three hundred nationwide.

LEGO branded products have universally been acclaimed for their educational value and their ability to stimulate the creative processes of our children. We are quite proud of our reputation for making stimulating and safe toys which give children great pleasure and give expression to their natural creativity.

Most significantly, in light of this pending legislation, LEGO branded products contain small parts; in fact, they contain almost nothing but small parts. Last year, the LEGO Group distributed nearly 100 million sets worldwide; those sets contained

approximately 12 billion pieces. Our toys are now in approximately 70 percent of American households with children under the age of 14. We have been distributing these products for over three decades, yet I am not aware of a single incident of a young child choking to death on one of our small parts.

Nevertheless, we have recognized that parents are often unaware that the age grading displayed on our packaging serves a safety purpose as well as an indication of developmental appropriateness. LEGO Systems, Inc. has been including a message alerting parents to the presence of small parts since it began marketing its toys in the U.S. in 1973. In fact, we have been frequently praised as a leader in the area of toy safety, and our labeling was held up before the Connecticut General Assembly as an example when our home state enacted the nation's first small parts labeling law.

In light of the probable enactment of the North American Free Trade Agreement, we are currently planning on assuming responsibility for manufacturing and distributing LEGO branded products in Mexico—potentially the world's seventh largest toy market. LEGO products are currently manufactured for Mexican distribution by our European affiliates.

With this background I would like to proceed to point out several aspects of Senate Bill 680 which will cause LEGO Systems, Inc. substantial harm, and may force us to abandon our plans to produce LEGO toys for the Mexican market here in the United States.

PRINCIPAL DISPLAY PANEL PLACEMENT

Although S. 680 does not explicitly state that the required warning label must appear on the principal display panel, the bill does require that the label be "prominently" displayed. The word "prominently" has been defined by regulations issued under the Federal Hazardous Substance Act to require placement on the principal display panel. 15 C.F.R. 1500. 121(b)(2)

Placing the required warning on the principal display panel will impose a significant burden on our company. The LEGO Group uses the same principal display panel graphics on its products worldwide. We have eliminated all text from the principal display panels to allow for universal acceptance in the over 135 countries in which LEGO branded products are distributed. Any written text which may be required in specific countries is located on other package faces which may more readily be modified.

Placement on the principal display panel becomes even more problematic in light of our plans to begin manufacture and distribution for the Mexican market. In order to make this venture worthwhile, we are in the process of developing trilingual North American packaging for distribution in the U.S., Canada and Mexico. Trilingual packaging will not only permit us substantial savings in the cost of packaging materials, but will allow us to achieve significant manufacturing efficiencies in not having to interrupt production runs and will also dramatically reduce our need to carry separate inventories of country-specific products.

Trilingual packaging will require us to triple the packaging space devoted to any warning message, as the text will have to appear in French and Spanish as well as English. By law in Quebec, the French text will require equal prominence with the English text—but by our company policy we will not favor the children of one nationality over the children of another. Therefore, a requirement of principal display panel labeling will result in a substantial portion of that panel being occupied by warning messages in three languages. We have attached an exhibit showing how the label required by S. 680 would appear in three languages on one of our smaller sets.

We currently achieve substantial savings by being able to use the principal display panel graphics designed by the LEGO Group for worldwide distribution. We estimate the initial cost of designing special North American packaging as being in excess of $350,000. Furthermore, about one-third of our product assortment is newly introduced each year. As a result, each year we will need to design special North American packaging for these new items, at an on-going cost of over $120,000 a year.

At a time when we are trying to boost the competitiveness of American companies to compete in the global market, it is counterproductive to impose burdens on those companies which will not be experienced by our foreign competitors. For example, rather than move production for the Mexican market to Connecticut. the LEGO Group could continue to provide Mexico with its international packaging produced in Europe and avoid the considerable expenses imposed by this legislation.

For the most part, our current packaging is designed to allow the consumer to see a full-scale picture of the model which can be assembled by the pieces in the

set. This allows consumers not only to know precisely what they are purchasing, but also to see the special pieces which are included in the particular set. The labeling requirements of S. 680 will force us to choose between enlarging our packaging to continue giving consumers the product information they expect, or to redesign and shrink the graphics on our packaging. Either option will entail substantial costs, and packaging enlargement will run contrary to our efforts to develop more environmentally friendly packaging.

As an alternative to principal display panel placement, we suggest requiring the label to be conspicuously placed on a panel other than the bottom or back face. This is the approach which has been adopted in Connecticut. Such conspicuous placement will certainly accomplish this bill's purpose of alerting parents to the presence of small parts without imposing an undue handicap on the American toy industry's international competitiveness.

WARNING ON DESCRIPTIVE MATERIALS

Senate Bill 680 requires that the warning appear not only on the product's packaging, but also on "descriptive materials which accompany" the toy. While this phrase is not defined, we are concerned that it can be interpreted to include the building instructions included in our sets. As you may be aware, LEGO branded products include building instructions to help children build-the model shown on the principal panel. These instructions are purely pictorial and do not include text in any language. Again, this permits worldwide distribution while also recognizing that young children learn best visually.

Requiring a warning label on building instructions would again require the development of special North American instructions at significant increased cost. We estimate that in the first year this would cost LSI over $270,000, with on-going annual costs of over $180,000. What's more, in light of the intention of this bill to inform parents of the presence of small parts at the point of purchase, this additional cost does not advance the bill's purpose. This is especially true since in most cases, the building instructions in our toys are used by the children who build the model and not by their parents.

Given the purpose of this bill to alert consumers of the safety risks posed by small parts at the point that they are seeking to purchase an age-appropriate toy, we urge you to drop the requirement that the warning appear on "descriptive materials" which accompany the toy.

WORDING OF WARNING

The configuration and wording of the small parts warning required by S. 680 increases unnecessarily the amount of packaging space that must be devoted to the warning label. Also, inclusion of the triangle with exclamation point symbol increases package clutter with a symbol that is not generally recognized by the consuming public and which is therefore likely to cause confusion.

We suggest that you adopt the approach which has been taken by Connecticut to simply require that the product include the signal word "WARNING" and a statement that the product contains small parts which pose a hazard for children under the age of three. Allowing flexibility in the wording of the warning will allow the development of more effective warning messages.

However, if the Committee chooses to require specific language, we suggest the following text:

WARNING: Contains Small Parts Which May Be Hazardous to Children Under 3.

IMPLEMENTATION DATE

Senate Bill 680 has an effective date of February 1, 1994. It is unlikely that the final form of this bill will be known before late summer. Given normal lead times for ordering packaging and producing our products, implementation by February 1, 1994 will result in significant disruption of manufacturing schedules and waste in having to dispose of noncomplying packaging.

This early implementation date also causes great uncertainty in commercial transactions. For example, we are currently negotiating a co-promotional event with a major food products distributor. This copromotion will involve distribution of hundreds of thousands of LEGO branded products during the next eighteen months, with deliveries of these products to the distributor scheduled for this summer. It will be impossible for us to meet this timetable for production and guarantee that the delivered products will be appropriately labeled.

It is also important to remember that the entire toy industry has just undergone a redesign of its packaging to come into compliance with Connecticut's recently en-

acted labeling law. To impose a new round of redesign on the industry so soon after implementation of Connecticut's law would be unduly burdensome.

To avoid these problems of rapid, costly, and inefficient implementation, we would suggest that S. 680 be modified to permit packages which comply with any state's small parts labeling laws to have an additional year to come into compliance with the warning label requirements of S. 680.

MAIL ORDER AND EDUCATIONAL TOYS

LEGO Systems, Inc. distributes some products through a direct mail order system. A substantial portion of our products sold through mall order are items which are not generally available in the U.S. retail market, but are distributed in other countries by the LEGO Group. These products therefore have international packaging, and would not include any special warning messages for the United States. Labeling these items would be a costly manual process which would ultimately increase the consumer's costs.

We include prominent small parts warning messages in our mail order catalog, so that consumers buying through our mail order service are alerted to the presence of small parts at the point of purchase. Since the goal of S. 680 is to alert consumers to the risk of small parts when they are selecting an age-appropriate toy for a young child, a warning in the mail order catalog is more effective in accomplishing this purpose than a label on the package which would not be seen by the consumer until the purchase has been consummated.

Similarly, our DACTA educational products division distributes our highly acclaimed educational products to educational institutions across the country. These educational products are primarily produced and packaged by our European affiliates and are in international packaging. These products are distributed to trained professionals, who are familiar with the products and the developmental needs of children. They are also designated for children by school grade, rather than by age. In the educational settings in which these products are used there is little risk of toys intended for older children being made available to children under three.

We believe that warning labels on packaging for products distributed through mall order and to educational institutions is not an effective way to achieve the purposes of S. 680, and will impose a substantial and needless burden on companies such as ours, and eventually on our consumers. We suggest that the bill be modified to permit the Consumer Product Safety Commission to exempt products distributed through mail order or to educational institutions if the distributor can demonstrate that it has taken measures to adequately warn the ultimate purchaser of the risk of small parts.

PREEMPTION

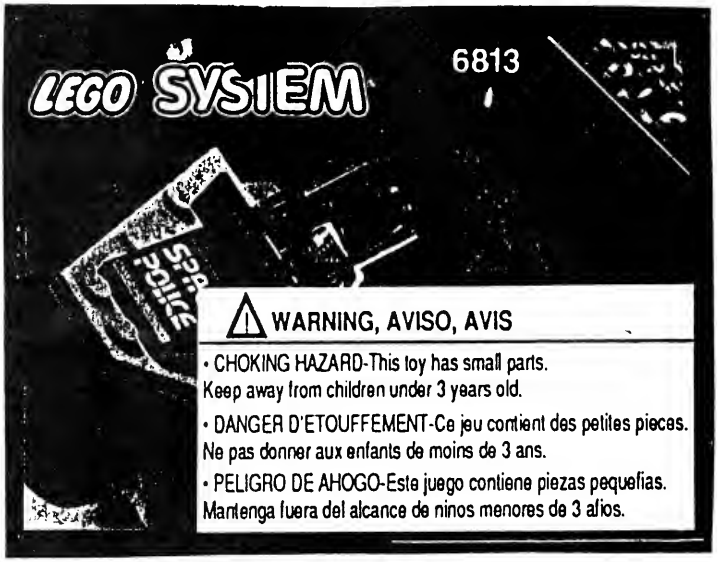
Finally, but perhaps most importantly, we are concerned that the proliferation of state labeling laws, in conjunction with S. 680, will place toy manufacturers in the position of having to include multiple warnings on their packaging, confusing consumers and cluttering packages with excessive verbiage.

Although the Federal Hazardous Substance Act includes a preemption provision when the Consumer Product Safety Commission has required a warning for a particular risk from a particular "hazardous substance", a recent ruling by the Second Circuit Court of Appeals has severely limited the effect of this provision with respect to toys. In *Toy Manufacturers of America, Inc.* v. *Blumenthal,* 986 Fed.2d 615 (1993), the court held that a CPSC regulation governing toys intended for one age group does not preempt state regulation of toys intended for a different age group with respect to the same risk. Under this ruling, while S. 680 may preempt state regulations requiring labeling for children between three and seven, it would not preempt labeling requirements for toys intended for children over age 7.

This is a real concern for the industry. A recent bill introduced in the Oregon legislature would require small parts warnings on all toys, regardless of intended age. Similarly, last year a bill was introduced in New York requiring labeling for toys intended for children up to fourteen years old. It is conceivable that under the Second Circuit's preemption ruling, a product intended for children between the ages of five and ten, for example, would have to bear the warning required by S. 680, and also different warnings required by New York and Oregon, since S. 680 would not preempt the labeling requirements for toys intended for children over 7. It is essential that S. 680 include a clear statement that state labeling laws imposing small parts labeling requirements different from those required by this bill are preempted.

Again we would like to thank this Committee for the opportunity to present LEGO Systems, Inc.'s views on S. 680. As I stated earlier, we support the general

purposes of this bill, and as a matter of company policy we have been informing our consumers of the presence of small parts in our products for decades. We believe, however, that the bill can be improved and should be modified so as to not unnecessarily handicap American toy manufacturers as we endeavor to compete in the global marketplace. We will be happy to elaborate on any points raised in this comment or to answer any questions posed by the Committee.



Senator BRYAN. Mr. Eio, thank you very much for your testimony.

Mr. Flynn, we will hear next from you.

STATEMENT OF DANIEL A. FLYNN, CHAIRMAN, BALLOON COUNCIL

Mr. FLYNN. Good morning, Chairman Bryan and members of the subcommittee. I am Daniel Flynn, vice president of Pioneer Balloon Co. of Wichita, KS. I am also chairman of the Balloon Council, a 3-year-old industry coalition of balloon manufacturers and distributors that was formed to help consumers better understand and safely use our products.

Thank you for the opportunity to express our views.

I commend you, Mr. Chairman, and the bill's sponsor, Senator Gorton, for your continuing efforts to help make the world a safer place for children.

Mr. Chairman, we agree with the legislation's goals, but we feel the balloon provisions are a clear example of Government intervening where industry is already solving a problem. Because the balloon industry is concerned with the safety of those who buy our products, several years ago we began placing choking hazard warning labels on packages of latex balloons.

When the Consumer Product Safety Commission began its activity, we decided to review our practices, and determine whether a more effective label could be produced. We began a collaborative effort with the ASTM, a well-respected national voluntary standard-

setting body, and the CPSC staff. Even when the CPSC commissioners rejected mandatory warning labels for balloons, because the commissioners recognized that they would be no more effective than the voluntary label, we continued our efforts to find a new and better label that would be prominent on the package, noticeable and highly readable.

We believe we have succeeded in all three counts. As you can see from the ASTM standard label which is on the easel here.

The industry has spent considerable time and money developing this label. But now this bill would present us with a new mandated label, which could impact greatly the way we package balloons and cost us sales, while not preventing one more accident.

The mandatory label, which also appears on the chart, is a label that parents said would cause them to stop buying balloons when they were interviewed during a CPSC-sponsored focus group. It is clear the economic harm to our industry, including the loss of hundreds of jobs, would be serious.

The ASTM label could begin appearing on packages of latex balloons almost immediately, months or years before the mandated label, and without the delay of possible legal challenges. Embracing it could save taxpayers millions of dollars in underwriting enforcement and other CPSC work.

But we recognize that labeling alone does not create awareness, and we have also taken giant steps toward educating the public in this area. Adults are more aware today of potential dangers than they were when the CPSC began its activity.

A 1990 national survey showed 27 percent of parents with young children were aware of choking hazards of latex balloons. That was before the Balloon Council began its work. The number of parents who are aware has dramatically increased with our activity, and the decline in choking deaths reflect this.

In 1990, the CPSC found that 43 percent of balloon packages had a warning label. Today, through our efforts, virtually all packages of latex balloons produced carry a label.

These efforts seem to have reduced dramatically death and injury from balloon choking, even while the industry sales have significantly increased. As the second chart shows, in the seventies and eighties, an average of seven children a year choked to death on balloons. In 1991, only three children did. And in the first 9 months of 1992, only one child choked to death on a balloon.

In the 1991 to 1992 time period, more than 5 billion balloons were sold in this country.

The industry goal is to reduce the number of choking deaths associated with balloons to zero. We believe our education efforts and voluntary label will achieve that goal quicker and with less turmoil than the mandated label. The industry is also concerned about the actual implementation regulations, which may place onerous burdens, such as specific colors, type sizes, and locations, which will not take into account production realities, and which could result in real economic hardship and loss of jobs—the same kind of things that the previous speakers addressed.

The balloon industry has been an American success story. Several companies like Pioneer, the company I work for, are recognized as leaders in the global marketplace. By placing additional burdens

on U.S. producers, this bill will benefit foreign competition, where lower production costs provide reduced operating expenses and allow more flexibility.

Finally, the CPSC spent several years examining this issue, and concluded that the industry standard was doing the job as well as a mandatory label.

Mr. Chairman, we urge the subcommittee to accept the CPSC ruling, and let the industry continue its efforts to warn consumers of the potential hazards of latex balloons. In doing so, you will help protect children, you will save tax dollars, and you will keep jobs in America by keeping our industry viable.

Thank you.

[The prepared statement of Mr. Flynn follows:]

PREPARED STATEMENT OF DANIEL FLYNN

Good morning, Chairman Bryan and members of the subcommittee. I am Daniel Flynn, vice president of Pioneer Balloon Company, headquartered in Wichita, Kansas. I am also the chairman of The Balloon Council, a three-year-old industry coalition composed of balloon manufacturers and distributors formed to help consumers better understand and safely use our products. I am here today representing The Balloon Council.

The members of The Balloon Council are for the most part family-owned businesses that have been in business for many years selling products they believe only bring joy and happiness to consumers. The Tilly Balloon Company in New Hampshire, for instance, is still owned by Neil Tillotson, who is credited with inventing the modern latex balloon 60 years ago.

Thank you for the opportunity to express our views today on The Child Safety Protection Act. I commend Chairman Bryan and the bill's sponsor, Senator Gorton, for their continued efforts to help make the world a safer place for our children.

The balloon industry, too, is concerned with the safety of children and, in fact, all those who buy our products. Several years ago, the major balloon manufacturers in the United States began placing labels on packages of latex balloons that warned of choking hazards. The label clearly explained to consumers that young children could choke or suffocate on an uninflated balloon or pieces of balloon. The warning was aimed at children under the age of 6 and encouraged adults to supervise children when they were playing with balloons.

When the Consumer Product Safety Commission (CPSC) began to explore ways to reduce choking deaths that involved products that were not subject to the small parts test, including latex balloons, the industry agreed that it was time to review its labeling standards and determine whether a more effective label could be produced. We began a collaborative effort with the ASTM (formerly called the American Society for Testing and Materials)—a well respected, national, voluntary, standards-setting body—to ensure that our label was effective and properly communicated potential hazards to consumer.

The CPSC staff was actively involved in this process, and together we worked through ASTM to create a warning label that effectively communicates to consumers the hazard of choking for young children.

After extensive consideration, the CPSC rejected mandatory warning labels for balloons because Commissioners questioned whether mandated labels would be any more effective than the voluntary standard. But we continued creating a new and better voluntary label—meeting with industry officials and CPSC staff to ensure the label would be prominent on the package, noticeable, and highly readable.

We believe we have succeeded on all three counts. The ASTM I industry label is:

WARNING:

Uninflated or broken balloons could be a choking or suffocation hazard, especially for infants and children.

Adults should inflate balloons and supervise their use with children under eight (8) years.

Discard broken balloons immediately.

Now that the industry has spent considerable time and money developing this label, we are faced with a new mandated label that could greatly impact the way we package balloons as well as cost us sales.

In fact, during the Consumer Product Safety Commission deliberations, the government ran a focus group of parents with young children to help determine the

wording that would be used on the mandated label. The label that was eventually selected by the government was the one that parents said would cause them to stop buying balloons.

This is a great concern to us, since throughout the process it has been our understanding that the federal government's goal is to warn parents of potential choking dangers, not put us out of business. But the way the label is worded and from the other requirements that would be imposed, it is clear the economic harm to be done could be serious.

Mr. Chairman, we agree with the goal of this legislation and feel several provisions of the bill can be a great benefit for consumers. But the balloon provisions are a clear example of government over-regulating business. This is a classic case of government intervention where industry is already working and solving a problem.

It is ironic that as the President and Congressional leaders are forced to consider Draconian cuts in "people programs" such as Medicare and Social Security to cut the deficit, the balloon labeling provisions of this legislation will needlessly expend tax dollars to duplicate a job being done competently by the private sector.

The ASTM-approved label could begin appearing on packages of latex balloons almost immediately—months or years before the mandated label and without the delay of possible legal challenges. Moreover, implementation of this ASTM-approved label instead of a mandatory one will save taxpayers millions of dollars in underwriting enforcement and other work by the CPSC. That would free-up scarce federal funds so the CPSC could tend to important safety-related activities which are not being corrected by the industries involved.

We also believe we have taken giant steps toward educating the public as to the choking dangers of uninflated or broken pieces of latex balloons.

Adults are more aware today that balloons pose a danger to young children than they were in 1990 when the CPSC began to examine its options for further reducing child choking deaths. A national survey taken in 1990 showed that 27 percent of parents with young children were aware of choking hazards of latex balloons. That was before The Balloon Council was formed and we believe this number has increased considerably with our activity in the last two years.

Much of what is said by proponents of this legislation about the inadequacy of voluntary labels or of industry efforts to address the choking issue is based upon information that may have been accurate before The Balloon Council was created. But that is past history. The industry has been working diligently to ensure that everyone who buys our products understands how to safely use them.

In 1990, pre-Balloon Council, the CPSC found that 43 percent of balloon packages complied with the voluntary label. Today, I am confident that virtually all packages of latex balloons sold by domestic manufacturers carry a warning label. And we have strengthened our outreach efforts to ensure that foreign manufacturers are aware of the regulations and comply with them.

The Balloon Council has taken on the responsibility of ensuring that manufacturers comply with the new ASTM label, and that public information about proper use of our products increases.

The combination of a voluntary standard and aggressive public education has reduced dramatically death and injury from balloon choking. In fact, although balloon sales have increased manifold in recent years, the number of choking deaths from balloons has declined. CPSC staff estimated the injury rate to be about one in 200 million balloons. But, in 1991 the injury rate was closer to one for every one billion balloons.

In the 1980s, an average of six children a year choked to death on balloons. During all of 1991, only three children choked to death on balloons, according to CPSC reports. In the first nine months of 1992, according to the most recent figures we have been able to obtain from the CPSC, only one child choked to death on a balloon. In that 1991-92 time period, more than 5 billion balloons were sold in this country.

Clearly, the industry goal is to reduce the number of choking deaths associated with balloons to zero. We believe our education efforts and voluntary label will help the industry achieve that goal quicker and with less turmoil in the industry than the mandated label. And with significantly less cost to government and to industry.

When you come down to it, a warning label, because of the controversy surrounding its effectiveness, is not a strong mechanism to rely on in an education campaign. According to the CPSC staff, the addition of the mandated label would add at best one percent to the group of parents who are already aware of the hazards!

Clearly, the more effective way to reduce death or injury from choking on balloons is by public education. Congress would act more wisely by asking the industry to implement its labeling plan and encouraging the industry in its nationwide campaign to educate the public—particularly parents of young children—about balloon

safety. We have begun that task (and have succeeded in placing information in leading national publications) and would welcome such encouragement from Congress to increase the effort.

We believe The Balloon Council's education campaign is part of the reason for the decline in the number of deaths despite a dramatic increase in sales. The Council's involvement in educating the public about balloon safety has had an impact on choking deaths. A mandatory label could not improve on this record, but additional efforts at educating the public would.

We believe that since the CPSC is required by law to defer to voluntary standards—that is, it cannot require a mandatory one if a voluntary label exists—it makes sense that Congress should also defer to a voluntary standard. This seems especially true in this case where the industry-created standard adequately addresses the risk identified by Congress and substantial compliance is likely.

We believe the ASTM label addresses the hazard and The Balloon Council can help ensure compliance. Thus, the voluntary label and The Balloon Council fulfill both requirements.

Congress should not force an industry to do what the CPSC by law cannot require.

In addition to the mandatory requirement proposed in the legislation, the industry is concerned with the wording of the label and requirements that the CPSC staff might implement regarding placement, size, and color.

Many of our packages are tiny and contain only a small number of balloons. The requirements on placement could force us to eliminate entire lines of product since there would be no room on the front of the package for the product name after we comply with label rules. (Under the ASTM standard, on our smaller packages, we tell consumers the warning is on the back of the package.)

The requirements that the label be in specific colors is an even bigger problem and would have a negative effect on all domestic balloon manufacturers, costing the industry as much as $10 million to comply. Since all package printing is done in a limited number of colors, if the government mandated two specific colors for the label, we would be severely limited in color and product selection. The orange and black combination envisioned by the CPSC staff would not be appropriate for many of our packages—say a package of pastel-colored balloons, nor would it "stand out" on a package of orange balloons. The industry would have to redesign and reprint in different colors its entire product line to meet this standard.

The balloon industry has been an American success story. There are several American companies like Pioneer that are respected throughout the world and are recognized as leaders in the global marketplace. By placing additional burdens on U.S. producers, the bill would benefit our foreign competition, where lower labor costs provide reduced operating expenses and allow more flexibility. This bill would not only hurt packaged balloon sales, but also balloons in general, many of which are sold in settings that do not involve children.

The warning proposed by the legislation is much sharper than the one the industry has work out through the ASTM, even though both labels address the choking dangers. Clearly, loss of sales could result if the suggested label is required on all latex balloon packages. In fact, parents in the focus group who reviewed label alternatives for the CPSC said this label would cause them to not buy balloons. The goal, it seems, should be to educate parents about proper handling of balloons, not to scare them from buying balloons.

Finally, the balloon provisions of The Child Safety Protection Act interfere with and undermine CPSC safety standard proceedings. The CPSC spent several years examining this issue, and concluded that the industry standard was doing the job as well as a mandatory label would. The industry believes that for Congress to set aside the commission's findings and mandate a specific warning label on balloons weakens the function and power of the CPSC which was established to be an independent agency, not "an arm of Congress."

ASTM/BALLOON INDUSTRY VOLUNTARY LABEL

WARNING

Uninflated or broken balloons could be a choking or suffocation hazard, especially for infants and children.

Adults should inflate balloons and supervise their use with children under eight (8) years.

Discard broken balloons immediately.

LABEL MANDATED BY THE CHILD SAFETY PROTECTION ACT

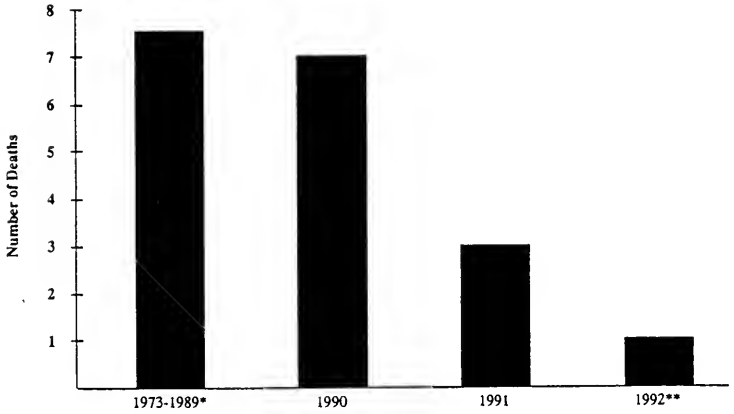
WARNING

Children under 8 can CHOKE TO DEATH on uninflated or broken balloons.

Adult supervision required.

Keep uninflated balloons from children. Discard broken balloons at once.

CHOKING DEATHS ASSOCIATED WITH BALLOONS



* *7.53 per year average*
** *only first nine months reported*

Based upon accident investigations by the U.S. Consumer Product Safety Commission and National Injury Information Clearinghouse

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["Child Safety Bill Is Hard To Swallow," from the July 7, 1992, Wall Street Journal; "Federal Nanny Makes a Poor Substitute for Mom," from the September 29, 1992, Richmond Times; and "Bill Is Well-Meaning But Isn't a Good Idea," from the October 3, 1992, Chicago Sun-Times may be found in the committee's files.]

Senator BRYAN. Thank you very much, Mr. Flynn.

Mr. Stickle, we will let you conclude the panel.

STATEMENT OF WARREN E. STICKLE, THE COALITION FOR CONTAINER SAFETY

Mr. STICKLE. Good morning, Mr. Chairman. My name is Warren Stickle, and I am consultant for legislative and regulatory affairs for the International Sanitary Supply Association that is based in Chicago. I am also the parent of a 3-year-old daughter, and deeply concerned on a personal level about issues affecting her health and safety.

Today, I am accompanied by two gentlemen, Bill Roper, who is chairman and chief executive officer of ROPAC, based in Fullerton, CA. He is a pioneer in the plastic pail industry, and a founder and former president of the Plastic Shipping Container Institute. And also with me is Ed Roth, director of plastic operations for the Davis Can Co. based in Ohio, and he is also a former president and director of the Plastic Shipping Container Institute.

The Coalition of Container Safety appreciates the opportunity to be here and applauds your effort in bringing the issue of child drownings in 5-gallon buckets to the attention of the Senate. I am testifying today on behalf of the Coalition for Container Safety, which supports the mandatory Federal labeling requirements for containers that was contained in the CPSC reauthorization bill passed by the House of Representatives last year.

A number of trade associations formed the Coalition for Container Safety to establish a public information and education campaign. On August 22, 1990, almost 3 years ago, the Coalition and

the Consumer Product Safety Commission launched a national education campaign to promote the safer use of 5-gallon industrial containers in home settings.

As of June 1, 1993, the coalition had received nearly 7,000 calls to its hot line, and had distributed nearly 95,000 brochures and basically, 118,000 labels and about 14,000 posters.

Last spring, however, when the coalition asked the CPSC staff how long promulgation of a mandatory labeling rule would take, we were told that an administrative proceeding leading to a mandatory label could take 2 years or more, and we were unsatisfied with that length of time. It was at that point in time that we decided to press for congressional action in hope of expediting a mandatory national labeling program.

Last May, members of the coalition and both majority and minority staffs of the House subcommittee developed final language which called for uniform national labeling of all 5-gallon industrial containers within 8 months of enactment. It was our hope that by ensuring that every new container was labeled, that we would have a consistent widespread and easily understood message.

The Bilirakis amendment had bipartisan support and was adopted by the House of Representatives last September. Unfortunately, the Senate adjourned before giving consideration to this much-needed legislation.

Last year, the Coalition also worked with the California with Assemblywoman Archie-Hudson on her labeling bill, which was AB 2942. The version adopted in California and signed by the Government was very close to or almost identical to the Bilirakis bill that had passed the House, as far as the colors were concerned, the contrasting colors, the size, the 5 by 2¾ inches. It was a very similar bill except for the language of having two, one English and one Spanish label.

Additionally, the American Society for Testing and Materials, ASTM, their subcommittee voted in May of this year to approve an emergency voluntary labeling standard which basically conforms to the 1992 House legislation with respect to size, contrasting colors, picture warning, and the warning language. Any time we get involved in dealing with legislation dealing with 4- to 6-gallon buckets, we need to look at some of those products that contain pesticides. It is important and I think imperative that label changes be coordinated between the Consumer Product Safety Commission, on one hand, and the other Federal agencies that regulate these products, particularly the Department of Transportation, DOT, and the Environmental Protection Agency, EPA.

Under DOT regulations, certain 5-gallon buckets containing pesticides are required to have a large corrosive label, which is 5½ by 8½ inches, with black lettering prominently visible, generally placed under the handle. It is therefore very difficult to put two additional bucket labels under the handle saying something else.

If you are also looking at FIFRA, and that is the Federal Insecticide, Fungicide and Rodenticide Act, there are a whole variety of terms used on a FIFRA label. A number of the terms that are used on a FIFRA label are words such as "warning," "caution" or "danger." And I think it is important when we think of the wording on the drowning label that what we have is another word that is dif-

ferent from that. Perhaps a word like "hazard" or some other word, so that there is no conflict between the messages that EPA is trying to get and that the CPSC is trying to achieve.

We believe that any legislation concerning the drowning of toddlers should require the coordination and the cooperation of both CPSC and EPA in trying to jointly meet the objectives of changing the label design and the label contents.

It is also important to try to coordinate the date by which these changes are taking place. And we would recommend April 21, 1994, because that is when all the worker protection standard labels, almost 9,000 of them at EPA, are going to be changed at that point in time.

In conclusion, Mr. Chairman, the Coalition supports preemptive Federal legislation imposing reasonable standards, like those contained in last year's CPSC reauthorization bill, for the mandatory drowning hazard labeling of all open-head containers with a capacity of four-or-more and six-or-less containers. We do so for three reasons.

First, it might help save the lives of innocent toddlers.

Second, we believe that a reasonable, uniform, and widespread label will sensitize people to the potential hazard.

And, third, we are concerned about the possibility and the potential devastating economic impact of conflicting State legislation.

If the Senate had had the opportunity to act on the CPSC reauthorization bill passed by the House of Representatives last year, all new 5-gallon buckets would now be labeled.

We look forward to working with you, Mr. Chairman, with the subcommittee staff, and with the consumer groups toward a prompt and equitable solution that will further protect our children.

Thank you very much.

[The prepared statement of Mr. Stickle follows:]

PREPARED STATEMENT OF WARREN E. STICKLE

Good morning, Mr. Chairman, and members of the Subcommittee. The coalition for container Safety appreciates the opportunity to be here and applaud your efforts to bringing the issue of children drowning in five-gallon buckets to the attention of the Senate.

My name is Warren Stickle. I am a Consultant for Legislative and Regulatory Affairs for the International Sanitary Supply Association (ISSA). I am also the parent of a three year old daughter and deeply concerned on a personal level about issues affecting her health and safety.

I am testifying today on behalf of the Coalition for container Safety which believes that federal mandatory labeling requirements for five-gallon open-head containers would be beneficial. We supported the mandatory federal labeling requirements for these containers which was contained in the CPSC Reauthorization bill passed by the House of Representatives last year.

The Coalition consists of trade associations representing manufacturers and fillers of five-gallon open-head plastic industrial containers. In addition to the ISSA, the Coalition members include the Chemical Specialties Manufacturers Association (CSMA), the Gypsum Association, The National Paint and coatings Association (NPCA), the Plastic Shipping Container Institute (PSCI), and the Society of the Plastics Industry (SPI).

A little over three years ago, the Deputy Medical Examiner for Cook County, Illinois, contacted the Consumer Product Safety Commission (CPSC) about a series of toddler drownings in five-gallon industrial containers. The CPSC began to collect data from other parts of the country and it documented 67 drownings in these containers between 1985 and 1987. In July 1989, the CPSC issued its first consumer

safety alert on this subject. In August, 1989, the Commission called together a number of associations alerting them to the problem.

Initially, there were varying degrees of disbelief. As we all know, accidents can happen in even a few seconds when children are left unattended. Upon evaluation of the news accounts and coroners' reports and after extended discussions with the CPSC staff, a number of trade associations formed the Coalition for Container Safety to establish a public information and education campaign.

THE COALITION'S PUBLIC EDUCATION EFFORTS

On August 22, 1990, the Coalition and the Consumer Product Safety Commission launched a national education campaign to promote safer use of five-gallon industrial containers in home settings. The Coalition established an "800" telephone number which is still operational. Press kits were sent to 1,600 daily newspapers and targeted magazines.

The Coalition also distributed a video news release which was used by the Cable News Network and over 60 television stations nationwide, reaching an estimated 13 million viewers. The video ultimately won an award for creative excellence at the 1991 U.S. Industrial Film and Video Festival. An article in English and Spanish distributed by the North American Precis Syndicate was printed by 186 weekly newspapers reaching an estimated 1.4 million readers. In addition, 12 magazines agreed to run the Coalition's public service advertisement.

The Coalition also has teamed up with a number of national organizations to help get the message out through their extensive networks. Included are the U.S. Department of Agriculture's Extension Service, the National Foundation for Drowning Prevention, the National Safety Council, and the National Safe Kids Campaign. Furthermore, member associations have incorporated coalition material in their own publications such as CSMA's Consumer Topics in Focus and taken other steps to publicize the problem.

As of June 1, 1993, the Coalition has received nearly 7,000 calls to the "800" number requesting additional information and warning labels. In response to these calls and written requests, the Coalition has distributed nearly 95,000 brochures, 118,000 labels and over 14,000 posters. Some of these materials were sent to over 300 health clinics across the country. The coalition has also made camera-ready artwork available to bucket manufacturers and users which can reproduce the warning label for their own use.

Major national publications which have run stories on the bucket drowning problem include Good Housekeeping, Ladies Home Journal, Parenting, Consumer Reports, McCall's, American Baby Magazine, Reader's Digest, Sesame Street Parent's Guide, Pediatric News, Contemporary Pediatrics Journal and The New York Times. In addition, ABC-TV's "Good Morning, America" ran a feature story on the problem last year.

In addition to our activities with the Coalition for Container Safety, 155A has been involved in the following:

- We have informed our membership of the problem and encouraged them to pass the word on to their customers through information that we are supplying at no charge. 155A has made actual warning labels available to its members. To date, we have distributed 44,000 such labels to consumers who already had buckets in their homes. In addition, 155A has distributed complimentary copies of label artwork to hundreds of members.
- ISSA has conducted an extensive media campaign in the Cook County area where ISSA is based. ISSA has provided information and press releases describing the Coalition's program to the three major newspapers and twenty-two trade journals. In addition, ISSA has contacted eight local radio stations and four major TV networks.
- Our staff has contacted local special interest groups such as Operation PUSH and the Archdiocese of Chicago, which have agreed to "pass the word" on to their members.

All of the Coalition members have engaged in similar outreach activities.

LABELING FOR THE HAZARD

Gypsum Association members began voluntarily labeling in 1990 with CPSC staff approved labels. Individual companies in other industry segments, such as Proctor & Gamble, began incorporating the label developed by the Coalition soon thereafter.

While some manufacturers apply labels for their customers, the fillers generally label containers themselves. In many instances, fillers are subject to specific laws and regulations related to storage, transportation and use of the product which require fillers to provide detailed information on the labels. Further, since the con-

tainer is the place where a company informs customers about its product, many fillers are concerned that other critical health and safety messages related to the contents will be overlooked.

Last spring, when the Coalition asked the CPSC staff how long promulgation of a mandatory labeling rule would take the Agency, we were told that an administrative proceeding leading to a mandatory label could take two or more years. The Coalition decided to press for congressional action in hopes of expediting a mandatory national labeling program.

The Coalition began meetings with the staff of the Subcommittee on Consumer Protection, Commerce and Competitiveness of the House Energy and Commerce Committee which has jurisdiction over the CPSC.

Last May, members of the Coalition and both majority and minority staff of the Subcommittee developed final language which called for uniform national labeling of all five-gallon industrial containers within eight months of enactment. It was our hope that by ensuring that every new container was labeled, a consistent, widespread and easily understood message would be communicated.

That language was offered in the form of an amendment to the CPSC reauthorization bill, H.R. 4706, on the House floor by Congressman Michael Bilirakis of Florida. The Congressman also served on the House Select committee on Children, Families and Youth and had a special interest in the problem.

The amendment had bipartisan support and was adopted by the House of Representatives last September. Unfortunately, the Senate adjourned before considering this much needed legislation.

Last year, the coalition also worked with California Assemblywoman Marguerite Archie-Hudson on her labeling bill, A.B. 2942. The version signed by the governor was virtually identical to the version passed by the U.S. House of Representatives last year—each called for four-to-six gallon buckets to have a permanent five inch by two-and-three-quarters inch label in contrasting colors with a picture of a child reaching into a bucket. The California statute also specifically recognized the need for and allowed a year for the enactment of preemptive national legislation. The only significant difference was the California requirement for a second label in Spanish.

Another labeling initiative began in 1992 by the American Society for Testing and Materials (ASTM) at the behest of the CPSC. After a year of spirited discussion ASTM's F15.31 Subcommittee voted last month to approve an emergency voluntary labeling standard which basically conforms to the 1992 House legislation with respect to size, contrasting colors, picture and warning language. The ASTM subcommittee also established a task force which is looking into performance standards for buckets. We will elaborate on all these elements in a moment.

RIVA FOCUS GROUP TESTING

Several of the labeling recommendations by CPSC staff and consumer groups are based on statistically questionable results of focus group testing conducted by RIVA Market Research. Until a better test is undertaken, we believe the Coalition label pictorial currently in use showing an infant reaching into a bucket should remain a viable option.

One of the problems is interpreting the reaction of the focus groups to the "curious-baby" pictorial. Attachment 1 is a side-by-side comparison of the label initially developed by the Coalition three years ago (and approved by CPSC staff) which is being used by Proctor & Gamble and other companies today and the modified version shown to the focus groups. The focus group, for reasons unknown to the Coalition, was not shown the Coalition label, but instead shown a bucket without a handle showing a toddler with strange hair-do and a deformed arm. The use of that "curious baby" pictorial is especially puzzling since the Coalition's label language was not only seen but also preferred by the focus groups.

More generally, the Coalition is concerned that labeling policy for hundreds of millions of industrial containers used safely by hundreds of thousands of workers and other consumers each day may be inappropriately influenced by interviews with 36 people from San Antonio, Texas. On page 2, the report notes its limitations, that it is intended to "point out the direction for future research" and that the results "cannot be projected to a universe of similar respondents". If the testing is, nevertheless, deemed pertinent, the Coalition notes the following results for the record:

- As stated on page 6 of the report, "the pictorials could stand alone and communicate the danger of bucket-related drownings among children". The Coalition believes this is sufficient to preclude the need for Spanish text on each industrial container.

• As stated on page 16 of the report, regardless of the actual risk, which is minimal, "[t]he danger of lingering chemicals in buckets overshadowed the danger of drowning for many respondents." For that reason, the Coalition suggests that industrial containers with products which are: (1) subject to labeling under the Federal Hazardous Substances Act (FHSA) or required to be registered under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and (2) required to be labeled with the signal words "Danger" or "Warning", either be exempt from drowning hazard labeling under this statute or subject to more appropriate requirements. Such a distinction would also eliminate the statutory conflict regarding use of the signal words. If that distinction is not made, this subcommittee will have to resolve the conflict for products subject to the FHSA and this legislation will have to be referred to the Agriculture Committee for FIFRA-registered products in these containers.

• As stated on page 29 of the report, "[t]here was no strong feeling among respondents about the size" of the label, with only "a few requests within each group that the labels be made larger." Given the fact that last year's CPSC Reauthorization and California bills and the recently approved ASTM emergency labeling standard all specify a five inch by two-and-three-quarters inch (CPSC-approved) Coalition label—or substantially equivalent (Gypsum Industry) labels—the Coalition believes that S. 799's proposed seven by five inch labels are unjustified and unreasonable in light of other labeling requirements.

• As stated on page 30 of the report, the problem with specifying colors for the label is that they can blend in with the color of the bucket. Given that the 1992 legislation and the 1993 voluntary standard specify contrasting colors, the Coalition can see no justification for disrupting this consensus.

CPSC COORDINATION WITH DOT AND EPA

When the Congress considers legislation requiring mandatory labeling for four to six gallon buckets containing registered pesticide products, it is imperative that label changes be coordinated between CPSC and the other federal agencies that regulate these products—the Department of Transportation (DOT), and the Environmental Protection Agency (EPA).

Under DOT regulations, certain five gallon buckets containing pesticides are required to have a large "corrosive" label, which is 5½ by 8½ inches, with black lettering, prominently visible and generally placed under the handle. It is, therefore, difficult to put two additional bucket labels on the same container under either handle.

Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), numerous provisions directly affect the label and procedures for changing the label.

First, under section 24 (b) of FIFRA, the EPA is responsible for all label requirements, frequently using terms such as "WARNING," "CAUTION," or "DANGER." The use of one of these words might create a conflict between EPA and CPSC regulations concerning container labeling. To avoid a conflict between EPA and CPSC regulations, perhaps we might consider the word—"HAZARD"—or some other word for addressing the infant drowning label.

Second, FIFRA labels are already very crowded with specific small print requirements. Little room is left on these labels for additional language without redesigning the label and the FIFRA required information. Several examples of labels clearly indicate that the label is too crowed to accommodate two additional, sizable warning labels for infant drownings.

Third, several different offices and programs within the EPA's Office of Pesticide Programs (OPP) require, at different times, changes on a pesticide product's label. Some of these EPA mandated changes might be to change an active ingredient, an inert, or a use. Sometimes a label might need to reflect some new set of directions or warnings about use or specific health and safety instructions. Sometimes the Agency may require that the registrant reshape the label or reduce its size, or place new instructions for proper disposal of the container on the label.

Specific programs also address specific needs to change the label, such as the Endangered Species Program, container rinsing proposals from the FIFRA requirements, and other programs. The Label Improvement Program (LIP) also seeks to update the label and make appropriate changes. In addition, label changes may be requested from the Air and Water Divisions of EPA to conform with the clean Air and Water Acts. Many different offices and programs require the registrant to make changes on the label, but no one cart of the Agency coordinates appropriate label changes. These various programs often do not know what the other parts of the Agency are doing about label changes.

A company frequently makes a label change in response to an CPA request, and prints thousands of new labels, only to find that another EPA office, program, or

division is requiring additional changes. Many companies print up new labels just in time to throw them in the trash. It can be an expensive, time-consuming and frustrating experience and means money and jobs for many small businesses who are fighting to compete in a tough market.

Other OPP programs which affect reregistration, including the container disposal program, the regulation of inerts, farm worker protection standards, certification and training requirements, and production reclassification will certainly have an impact on the fate of present labels or the re-labeling of existing stocks.

It is imperative that there be substantially increased cooperation and coordination between EPA and CPSC concerning label requirements, so that these two agencies do not cause unnecessary duplication of actions that might require the destruction of millions of labels.

We believe that any legislation concerning the drowning of toddlers should require the coordination and cooperation of both CPSC and EPA in jointly meeting the objectives of changes the label design and the label's contents.

Fourth, the EPA is presently implementing the largest label changes in its history, by implementing the new Worker Protection Standard (WPS), which affects between 7,000 and 9,200 hundred products and their labels, and all supplemental labels of these products. In essence, all agricultural pesticide products and some utilized for home, lawn and garden use will have to undergo label changes to reflect the new WPS required information. All product released for shipment after April 21, 1994, will need to contain the new WPS label instructions.

The EPA is attempting to coordinate other label changes regarding the wetlands, and 2,4,D labels with the April 21, 1994 date. It is important that any implementation date for five gallon bucket be coordinated with the April 21, 1994 date, so that registrants that fill buckets with pesticide products only have to change their label once.

I have gone into some detail about the label regulation problems with which I am familiar. But we need to recognize other agencies might involved such as the Food and Drug Administration and the U.S. Department of Agriculture.

PRACTICAL CONSIDERATIONS

Some fillers are now using a polyethylene sleeve to slip onto an industrial container as product labeling. I have some examples with me for the subcommittee. Despite the enormous and increasing amount of environmental health and safety information required on the label—including U.S. Department of Transportation (DOT) labeling for corrosive substances which also must be placed under a handle—there is usually a transparent area below one handle through which a drowning hazard warning printed on the bucket could be viewed. However, the sleeve may not always be perfectly aligned so the label on the bucket would be obscured, in violation of the proposed statute. Because the polyethylene sleeve is not permanent, printing the drowning-hazard warning on the sleeve also would not comply with the statute as written. Therefore, the warning would have to be printed on both the bucket and the sleeve.

Suggestions have been made to switch to other sizes of plastic containers or other forms of packaging. However, the container size at the low end is limited by efficiency and at the high end by weight of the contents. The "bag-in-a-box" package, a cost competitive alternative, is not feasible for pastes or immiscible or viscous liquids, as many construction compounds are. Metal open-head containers cost more, and have weight and corrosion concerns. Tight-head containers cost twice as much as the open-head containers and would be totally unsuitable for many products like dry wall compound, food or paint.

CONCLUSION

Having said all of this, the Coalition still supports preemptive federal legislation imposing reasonable standards, like those contained in last year's CPSC Reauthorization bill, for the mandatory drowning-hazard labeling of all open-head containers with a capacity of four or more and six or less gallons. We do so for three reasons: first, it might help save the lives of innocent toddlers; second, we believe that a reasonable, uniform and widespread label will sensitize people to the potential hazard; and last, we are concerned about the potentially devastating economic effect of conflicting state legislation.

If the Senate had had the opportunity to act on the CPSC Reauthorization bill passed by the House of Representatives last year, all new five-gallon buckets would be labeled today.

We look forward to working with you, Mr. Chairman, the Subcommittee staff, and consumer groups toward a prompt and equitable solution that will further protect our children.

ATTACHMENT 1

Focus Group "Curious Baby"

Coalition Label

Senator BRYAN. Thank you very much, Mr. Stickle.

Let me attempt now to draw out some of the differences that I have heard in the testimony here from each of the two panels. Tell me if you disagree with this observation. It would seem that all of you recognize that warnings are appropriate to alert parents as to the possible risks or hazards involved in either balloons, small balls, marbles, toys, and games, toys that have small parts, and with respect to Mr. Stickle's testimony, with respect to buckets that have a commercial size of four to six gallons? Are we in sync on that? If I have misunderstood your testimony, please let me be corrected and appropriately enlightened.

So, we all agree that it is appropriate to have some warning to alert parents of these possible risks and dangers.

Now, as I understand it, essentially, the differences then exist with respect to the labeling format, the coordination that Mr. Stickle is advocating with respect to other agencies that regulate

warnings under other Federal legislation, that we have some concerns about the implementation schedules on the time, and, in the case of Mr. Stickle's testimony, there are other pieces of legislation that require a specific date, I believe you said April of 1994.

Mr. STICKLE. April 21.

Senator BRYAN. Thank you for correcting me.

And those are essentially the areas of concern, and you raise the issue of marketing competitiveness and a clutter and those kinds of issues.

Mr. Stickle, let me address my first series of questions to you. Your testimony, at least in part, is that there are other Federal agencies that have jurisdiction of other aspects of public health and safety that currently have label requirements. And at least in the one instance that you cite, apparently they have a requirement as to the placement of that label. And you are suggesting that there ought to be some coordination among all of these.

That is a pretty difficult proposition to argue against.

To what extent have you had a chance to discuss with the sponsors of the Bucket Protection Act your concerns about that, and attempted to work with them and other interested parties to resolve what may be conflicting mandates under Federal law?

Mr. STICKLE. It has been our opportunity to meet with some of the subcommittee staff, as well as Senator Metzenbaum's staff to help to alert them to the other Federal regulations, such as under DOT and under EPA. I also have personally had the opportunity to meet with people in the area of OPP, which is the Office of Pesticide Programs and toxic substances at EPA, to alert them to some of the other issues that might be coming from them from another direction.

Senator BRYAN. Sure.

Mr. STICKLE. We are looking at a whole variety of situations at EPA where there are constant label changes. And this is a story for another committee, Mr. Chairman, but there are problems within the agency in coordinating all the numerous changes. But the most massive change that EPA has ever undertaken is the worker protection standard that will affect anywhere from 7,500 to 9,200 labels on products. And these are products.

The net result is that they have set a date of April 21, 1994, by which anything shipped after that date, basically, is going to have a new label on it. So, if there is anything that we can do to coordinate this with that particular date, it would be most beneficial.

The worst-case scenario is if you change 9,000 labels on April 21, and then we turn around and select May 1, where we have to throw out literally millions of dollars' worth of labels, that is the most economically and I think useless exercise.

Senator BRYAN. That I think is a persuasive point. That is certainly not what this subcommittee chairman would be interested in doing. We are not trying to complicate life. We are trying to accomplish a purpose, and that is child safety. And there is no reason to subject the industry to that kind of conflict.

Now, Mr. Stickle, you also favor the national mandatory labeling which, in language which Mr. Miller and Mr. Eio testified to, you are talking about preemption, are you not, sir?

Mr. STICKLE. Yes, that is correct.

Well, as I am sure you are well aware, the Consumer Product Safety Act contains basic preemption language, as well. The real concern that we have is obviously one that was mentioned earlier. And it is that you have 50 different States going off in 50 different directions. And you can think of the interstate commerce and marketing chaos that that would result in.

That is why we are looking for a mandatory federally sponsored labeling program, so that we have one label and we have that everywhere. In fact, the California legislation that passed has a proviso in there that they would, in essence, yield to a Federal standard in order to comply.

So, the bottom line on it is, even though California has taken the lead and has taken the lead in a bill that is very similar to the Bilirakis bill that passed the House, they would still yield to a national standard as long as we can get that done in a reasonable amount of time. And the deadline for kicking in the California legislation is September 1, 1993.

Now, there are discussions in California because there are some loopholes in that law that need to be fixed before it can be fully implemented. But they are still shooting for either September 1 or perhaps January 1. So that is the timetable. It is very short.

Senator BRYAN. Mr. Stickle, I am less persuaded, but let me give you the chance to make the case as to the concerns you have about language, size, and location of the label with the exception of the conflicting Federal mandates. Obviously, we cannot have 20 Federal agencies all saying the label we have jurisdiction for must be placed in the identical location. That is a task that is difficult even for Government to require.

Tell me what your concerns are about the language, and at least the stylized format of the warning. I want to give you the benefit of making that case.

Mr. STICKLE. OK. First of all, if you have a label under one handle, whether it is an oxidizer label or a corrosive label, that really means that you are talking about putting one label under the other handle, not two.

Now, I could certainly see a compromise situation where you could look at a label like this and maybe make it a little larger than this as far as tall is concerned, and combine the English as well as the Spanish, put it on one label, and require that it be under the handle. And the warning language I think we are basically in sync on.

The other groups that testified this morning about the child falling into the bucket, that is something that the ASTM has also, I think, agreed with, and we are certainly in support of that.

The problem that we have otherwise deals with four different colors. Now, you can see that this kind of a bucket has basically blue on it. This one has got purple and blue. And if you are then talking about adding four more colors——

Senator BRYAN. You might have everything in the visible spectrum on one bucket.

Mr. STICKLE. We might have a rainbow. And once we get there, I think we have a real cost factor. Before I go into the cost factor——

Senator BRYAN. I get the drift. What you are saying is that you are going to have so many different color requirements on there. But essentially you are saying the change of the symbol to have not just the child looking in but falling, you are able to work that out?

Mr. STICKLE. We have no problem with that. We think that is a better solution than what we originally came up with.

Senator BRYAN. And the format of the language, you think you may be able to work that out?

Mr. STICKLE. Right.

Senator BRYAN. I am not trying to put words in your mouth, but that is not something that gives you great heartburn. Your concern basically is that the multiplicity of colors that may be required——

Mr. STICKLE. What our real concern is right now is that California has a bill calling for contrasting colors. It is my understanding that last week in the State legislature in New York a bill was introduced calling for contrasting colors. The Bilirakis bill last year called for contrasting colors. And the new voluntary ASTM standard calls for contrasting colors.

Everybody else seems to be headed in that direction, and if we can head in that direction too, I think we will work something out that will be both cost effective and achieve the objectives that we are trying to get to.

Senator BRYAN. Mr. Stickle, I think your approach is reasonable. Those do not sound to me like things that are irreconcilable, and I thank you for your testimony and your constructive approach to this situation that we confront.

Mr. Flynn, let me deal now with you, if I might. Unlike your other three colleagues that testified I am assuming from your testimony, and correct me if I am wrong, that you do not want any Federal legislation at all. They are all arguing for preemption, but you do not want any Federal legislation. And if I misunderstand that, please set the record straight.

Mr. FLYNN. Our preference would be to allow the industry to go as it has, with the voluntary standards, yes.

Senator BRYAN. So, no Federal legislation. Your position is your position, I am not here to quarrel with it. I just want to make sure that we have the record clear.

Let me just ask you, without any Federal legislation is your industry concerned with the kind of problem that Mr. Miller and Mr. Eio addressed, Mr. Miller in his oral testimony, Mr. Eio in his written testimony, that you have got all kinds of different State requirements that are beginning to emerge and it would be very difficult, to make the case that they tried to make, to market in the United States if ultimately we have 50 different State standards in terms of age, size, and content of the warning label? Does that give your industry any concern at all?

Mr. FLYNN. Yes, that would be concerning. But it is interesting to note that when the State of Connecticut did look at mandatory labeling, which was the first example of this, looking at the facts, they did not put balloons into that bill. So, I think that we do have a very reasonable case to state, and we would be prepared to work that case.

Senator BRYAN. Well, I respect the right for you to express your opinion. That is what we are here to do is to develop a legislative record.

I am not sure that I understand. I want to give you a chance to make the case again. The marketing impact—I mean, you portray a pretty dire, grim situation if indeed you are required to do these labels, and that market share will fall. And I think you used the term, an onerous burden.

Let me understand that. I mean, what is being discussed here is something to alert parents to the possible risk of danger. And maybe if you could have your colleague who is helping you with the chart there go back to the label, the voluntary label that you have used as an industry, vis-a-vis the label that would be required, and thank you very much, sir.

Now, what is so onerous about the Child Safety Protection Act label versus what you have got there?

Mr. FLYNN. It gets down to several points which you would not see from here, and those are points that both of these gentlemen made which have to do with placement, size, and color.

Senator BRYAN. Let us put placement, size, and color aside for a moment—those are reasonable positions to discuss. How about the content? Now it seems to me the content there is that a child can choke to death on uninflated or broken balloons.

Mr. FLYNN. The wording of the two is not all that different, but what the CPSC's focus group found was that this, the lower label, the label that is being recommended, parents said this would dissuade them from buying the product. This would not keep them from using the product in a safe manner, but it would scare them. It made them feel that the balloon product is a very, very dangerous product.

Senator BRYAN. And this survey or focus group indicated that the difference between those two is in the top, the voluntary label, consumers would buy balloons, and the bottom one, consumers would be disinclined to buy balloons? Is that the essence of it?

Mr. FLYNN. That was the essence of it. And I think the big difference is the phrase, "choke to death." The first label accomplishes what several of the other people have pointed out. It explains what the hazard is. Uninflated or broken balloons could be a choking or suffocation hazard. But it does not scare people away from using the product in a responsible manner.

Senator BRYAN. OK. Let me give you a chance to address the size, placement, and color issue.

Mr. FLYNN. Like the Lego products, we have a lot of packages which are very small. And if we have a mandated size and/or colors, we are going to be very limited with what we can do on some of the packages we produce to hit the size requirements that the CPSC was talking about. It would take up more than half of the front display panel. We think that would very much limit the ability to produce those kinds of packages, and we would probably have to discontinue those kinds of packages.

Further, the balloon packages are produced in a variety of colors using a printing process which is somewhat limited in terms of its flexibility. So, if we are then forced into two specific colors for this label, that would drastically limit the artistic design of the pack-

ages which are available. We do not print in process colors as many other people do on paper products.

Senator BRYAN. Mr. Flynn, as I read the legislation there is no requirement that the label be in certain colors. Do you read it differently?

Mr. FLYNN. Yes. The way we read it, the implication is that the CPSC will be responsible for the specific implementation of this direction. And that being the case, and with the background of what the CPSC staff had been looking at, we assume that would be what the end result is.

Senator BRYAN. It is my understanding, and I appreciate your concern, that the regulations that would govern the label or the language require that there be a contrast by typography, layout, or color, being in the disjunctive, not the conjunctive. But I understand what you are saying.

Let me ask you, how do you deal with the size of your voluntary warning labels? You are saying that the size that you apprehend will be required will consume a great percentage of the display panel. How do you deal with that in your voluntary standards?

Mr. FLYNN. We deal with it by the word "prominent," I believe—I am sorry, "legible."

Senator BRYAN. So that it varies based upon the size of the packaging?

Mr. FLYNN. Right. And in some packages it would not be on the primary display panel because that would be next to impossible to accomplish.

Senator BRYAN. And finally, let me get to the voluntary part of this. Is it your understanding that all balloons in the United States that are marketed, either of domestic or foreign origin, do contain this voluntary labeling?

Mr. FLYNN. This present one? No. This was put together last year, and it is in the process of being enacted. The Balloon Council, which I am representing, is very committed to making sure that every package in the United States contains that kind of voluntary label, yes.

Senator BRYAN. Mr. Flynn, would it be correct to say that, notwithstanding the best of your own intentions urging every manufacturer to adopt the voluntary labeling your group has put together, you do not have the ability to force the manufacturer to do so. And someone could very well say, look, we are not going to put in the time and the effort, and we think it is just too expensive and clutters our package, and all of the other arguments that have been made here today, and we are just simply not going to do it. That is entirely possible; is it not?

Mr. FLYNN. I think balloon industry has shown a very proactive approach to addressing this issue. As you see, we are not talking about hundreds of children a year. We are talking in 1992 of one child.

And we recognize that that is a number that is too high, but that number is coming down because the industry is going out of its way to try to get the message out, not just in labeling, but we have done outreach to parent's magazines and that kind of thing to increase awareness of the potential hazard. So, I think the industry

has demonstrated that it very much wants to do the right thing in this issue.

Senator BRYAN. It still would be true, would it not, that there is nothing that would require members of the industry who chose to disregard the council's recommendation from ignoring them?

Mr. FLYNN. That is correct.

Senator BRYAN. Mr. Eio and Mr. Miller, your testimony, I think, paralleled one another pretty closely. You want the implementation date 1 year from the date. I think that was your testimony, Mr. Miller. Do you disagree with that, Mr. Eio?

Mr. EIO. I agree with that.

Senator BRYAN. And you are talking about reducing package clutter which, I guess in the arcane language of environmental debate, is source reduction I believe is what they call that. Am I right? OK. We are all for source reduction. I think the committee is all for source reduction as well. I understand the preemption and the implementation date, and that all makes some sense, I think.

Tell me a little bit about the difference in the standard 1.68 versus 1.75. Why is that kind of the holy grail in terms of the size that we want to work with? I am not sure I understand.

Mr. MILLER. It is based upon death and injury data collected by the CPSC. And I think we could get a statement from the staff of the CPSC or the CPSC itself that 1.68 is an acceptable dimension to them.

And it would be helpful because the modules for testing are in place in all the laboratories around the world due to other standards within the toy safety standard.

Senator BRYAN. Are you saying existing in terms of your production equipment, that 1.68 has some relevancy in terms of the equipment that you are using in manufacturing?

Mr. MILLER. Correct.

Senator BRYAN. And that a 1.75 standard would require you to retrofit or change that equipment?

Mr. MILLER. It is not a significant amount of retrofitting. It really is a question of uniformity with all of the other choking standards as they relate to rattles and other toy-like components that are tested today.

Senator BRYAN. It may be unfair to ask you, but since we are having a pretty informal colloquy here, the origin of 1.75—I probably should know it but I do not. Tell me where that comes from?

Mr. MILLER. There was one death that occurred at that dimension and it is one that I indicated was under questionable circumstances, meaning that probably it was not the dimension of the ball itself that was the factor causing death.

Senator BRYAN. Both you and Mr. Eio expressed concerns about the symbol. And I believe that unlike the testimony that was offered by Ms. Feely, I think, who indicated that the triangle with the exclamation point has a universal symbolism, that it is akin to the circle with the slash which all of us I think recognize today as a no-no, do not do whatever is contained in the symbol. You have indicated that that is not the case.

Mr. MILLER. The first time I heard Ms. Feely's statement, I was under the impression that she felt this could become a universal symbol. I do not know if she is still in the room.

Senator BRYAN. I may have misunderstood and I do not what to mischaracterize.

Mr. MILLER. Mr. Chairman, I have to say to the best of my knowledge it is a meaningless symbol. And other than the two examples that she showed, and other than on electrical equipment with 110 volt dangers to them, it is just not in use. It is certainly not in any consumer product area that I know of, and I am not aware of it in any consumer product regulation.

Senator BRYAN. I have a document here that was approved by the American National Standards Institute, and it is entitled: "Product safety signs and labels." Now, I have not digested all of this, Mr. Eio or Mr. Miller, but it does at least in one of the entries indicate the safety alert symbol. And it goes on to say, "a symbol which indicates a potential personal safety hazard is composed of an equilateral triangle."

I was no superstar in geometry, but I think we have got an equilateral triangle on this symbol, as I understand it, surrounding an exclamation mark. Nobody ever hailed my punctuation efforts in English but, I mean, that appears to be a punctuation mark in there and conforms to the standard. I am not trying to blind side you.

Mr. MILLER. I have a copy of the standard in front of me.

Senator BRYAN. Why not tell me how what I am reading here is not inconsistent with what you are telling me?

Mr. MILLER. ANSI Z–535.4, meaning the American National Standards Institute, was 10 years in the making. The sponsor of the standard had a secretariat made up of the National Electrical Manufacturers Association. And the aim of that group was to protect consumers in the use of electrical products.

In the introduction, which is on page 8, they indicate the scope and purpose, but this is a hope, not a reality. It took 10 years for them to agree upon this standard. It has just been promulgated. And the aim was not at least in my view as president of a major consumer product association they are not attempting to proselytize the world on adopting that standard. If it is going to be used, it is something that might happen in the future.

Senator BRYAN. OK, so maybe it is a nuance of language. Maybe it has not been universally accepted. But if it is being proposed, and if it does serve the purpose of focusing attention on a label which we all agree in some form or format ought to be called to the attention of parents, what is the objection to it?

Mr. MILLER. Because the standard they are putting forth is not practical for the toy industry. I think Mr. Eio's testimony is very clear as to why it is not practical.

Senator BRYAN. Well, let me give him a chance because I hear you saying that the small ball standard, 1.68 versus 1.75 is the product of a CPSC staff recommendation, correct me if I am wrong. My understanding that you like that, you have explained the reason for that. The same staff also recommended, again as I understand their recommendations, that the size, triangle, border, and box that becomes the point of contention here was also recommended.

Mr. MILLER. Mr. Chairman, I think you and I would both agree that they are not perfect.

Senator BRYAN. No, we would certainly acknowledge that. Neither am I, nor those of us who serve on the committee, nor are any of you.

Mr. MILLER. But to be serious, in the first case, we are talking about standard risk assessment techniques, and the commission is excellent in doing that, in my opinion. In the second case we are talking about a little bit of freelancing, if you will. This is a hope, not a reality. And to force an industry to go through unnecessary expense—more than expense, the complication and the time delays that come about from compliance, and I think Mr. Eio's testimony is very clear on that.

Senator BRYAN. Let me give Mr. Eio a chance. I guess where I am having a little difficulty, I am not seeing this great burden that you clearly feel would be imposed upon the industry. If we had a format along the lines that are suggested, you are concerned about the prominent placement. And you I think correctly state that the regulation currently means principal panel, so that would mean the front for most. And you describe the Connecticut law and provided us an example.

Why is it? I mean, we are not in the manufacturing business and we want to make sure this record is clear. What is the burden?

I mean, we have got a triangular warning sign with an exclamation point that at least some people believe has a merit to convey to people, look, there is a potential hazard here, read further because the health and safety of a child for whom a product is being purchased needs to be evaluated. That strikes me as being a legitimate public policy that we ought to be looking into. And the label itself does not strike me, per se, as being that difficult to design or craft. And yet you all feel that there is a burden, and I want to make sure your points are highlighted in the record.

Mr. EIO. Mr. Chairman, there are a couple of reasons. One is the industry has just gone through a total relabeling process to comply with the Connecticut State legislation. The second one is, we have never seen any evidence that this triangle is recognized by consumers. It is totally new in this area. We do not feel it adds anything.

The proposal that we have is that the word warning is in capital letters, in three different languages in our case. Obviously, that is not necessary in all cases. It says, "warning, aviso, avis." And we think really that is sufficient to attract the consumer's attention.

Senator BRYAN. You may be right.

Let us assume for the sake of argument that you are right, that that might be sufficient, is there great danger in having this triangle with the exclamation point?

Mr. EIO. I think there is the risk of confusion and there is certainly additional cost involved, because we have to go through the whole process again. Whereas without the triangle, I think there is a reasonable chance that this legislation would comply and would be in line with the Connecticut legislation, and would prevent the industry having to go through another change just for the sake of a triangle.

Senator BRYAN. Recognizing that you speak for an industry which is situated in Connecticut, I mean, perhaps, Mr. Miller, you might be able to answer this question on a broader scope. Do all toy manufacturers now have the labels that conform with the Con-

necticut law? Because from what you are showing me, there are now eight States and perhaps a proliferation as we meet, one, two, three, four, five, six, seven, eight States that have different standards. I mean, that is probably your most persuasive point in terms of the need to standardize so that you do not have to market 50 different labels.

Mr. Eio is saying that they have just complied with the Connecticut law.

Mr. MILLER. Well, certainly, many of them have, or they are scrambling to do it at this point. The final regulations in Connecticut, if I am not mistaken, were just put forward several months ago. And so, some people have waited until that time. And I cannot say, as a matter of fact, that they have done it, but they are headed that way.

I think, Mr. Chairman, there are several other points involved here. One is that, with all due respect to the subcommittee and its power to regulate if it wants, this is really a technical question that belongs back in the Commission, once it has been given—firm direction to do so. I hate to use the word micromanagement, but, you know, we all have been accused of that.

Second, it is not a question of whether this labeling will do any harm. The question is: Is it going to do any good?

And it is very difficult to demonstrate that this will do good in the sense of reducing injuries.

Dr. Teret's material, which I have had the benefit of reading, would suggest that most consumers understand the kinds of labeling in the kinds of formats that exist today, that are consistent with the Federal Hazardous Substance Act and are consistent with the CPSC guidelines for labeling. And that is that it is clear, that it is prominent and that it be used in a way that makes sense.

You know there are 120,000 different toys on sale in the United States at any one point in time. If we say 30,000 of them are the toys that this committee is focusing on it, it is very hard for a general regulation to accommodate each one of these packages and toys themselves.

Senator BRYAN. And that leads up to my last line of questioning.

Mr. Eio, you had an example of what you believe that this legislation would require by way of placement. And you have provided us an example of the Connecticut law. Walk me through, if you will, the requirements, as you read the proposed legislation, that requires the label in the size that you have it there on the illustrated panel?

Mr. EIO. On this one?

Senator BRYAN. Yes, sir.

In other words, is it your view that the legislation requires the label to be that size?

Mr. EIO. Yes, sir, it is.

Senator BRYAN. And, again, I am not trying to be quarrelsome, but what is it that requires it to be that size?

Mr. EIO. I think there are specifications in the Federal hazardous substance legislation which determine the size. I am not sure if that is right. I think that is the case.

Mr. MILLER. It has got to be legible.

Mr. EIO. Yes.

Mr. MILLER. And there are certain minimum type sizes that are called for.

Mr. EIO. And to make it a lot smaller than this, it would be difficult to read. This one complies with the Connecticut legislation and is legible. This one is of the same type face, or maybe one point larger.

Senator BRYAN. Well, it strikes me that you may make a point that, depending upon the size of the packaging, that there is some correlation between the size of the label. I mean, on one hand, we are trying to encourage everybody to use smaller packaging because of the environmental concerns that we have and landfill and paper products and all of that, and this committee has dealt with that issue, as well. And if you have a smaller package, it reaches a point in time, I suppose, where the label would literally consume 90 percent of the front panel.

Can that be addressed with some type of proportionality do you think, Mr. Eio?

Mr. EIO. Well, with all of our models—the illustration of the primary model on the front of the box is always the exact size of that particular model. It is one-to-one. And, as you see, this label actually obliterates that.

Over one-half of all the Lego sets we sell in North America are approximately this size. Over 10 million boxes would be of this kind of size. And we feel that this one is just as legible, particularly with the contrast of color. And that when people pick these up from the shelf, they do tend to look at them. And, really, that labeling, we feel, is inescapable.

Senator BRYAN. Well, it seems to me that you raised two issues: one, placement; one, the size. And I hear that. The record is clear.

Let me thank each of you for appearing. I appreciate your responses. And, obviously, the committee will take under consideration the concerns that you have expressed in developing this legislation.

Thank you very much.

This subcommittee hearing will stand adjourned.

[Whereupon, at 12:30 p.m., the hearing was adjourned.]

APPENDIX

PREPARED STATEMENT OF THE SAFETY STEEL CONTAINER COALITION

The Safe Steel Container Coalition (the "Coalition") urges the Consumer Subcommittee to redefine the product covered by S. 799 to reflect the fact that the steel 5-gallon containers do not present any pattern of danger to children. Extensive epidemiology collected by the Consumer Product Safety Commission ("CPSC"), as described below, confirms this fact.

I. THE SAFE STEEL CONTAINER COALITION

The industry producing steel 5-gallon containers is small—its annual sales are approximately $150,000,000 and unit volume is in the range of 75-80 million.[1] Prices of steel containers range from under $1.50 to over $3.00 depending on the gauge of the steel, but the majority are less than $1.50. Products such as driveway sealants, roof coating materials, chemicals, soy bean oil, paints, and other items are brought to the industrial market in these containers. Steel buckets are particularly useful for solvent-based materials.

The Coalition is an ad hoc group of producers and users of 5-gallon steel containers who have just recently joined together to address the labeling and performance standards issues raised by S. 799.[2] However, our members have also been active in the consideration of these issues at the American Society of Testing & Materials ("ASTM") and have cooperated closely with the CPSC in its ongoing investigation of infant drownings.

S. 799 would require manufacturers of 5-gallon containers—whether plastic or steel—to place English and Spanish labels and pictographs warning of the danger of infants drowning in the containers. The CPSC also would be required to promulgate performance standards for such containers to address the drowning hazard.

The Safe Steel Container Coalition, for reasons noted below, opposes the application of this legislation to five-gallon steel containers.

II. DEALING WITH THE REAL DANGER

The danger of infants drowning in 5-gallon plastic containers is a documented problem. However, extensive data on these tragic incidents show clearly that the risk is not posed by steel containers.

S. 799 would apply to plastic as well as steel containers in spite of epidemiology which indicates no pattern of problems with steel containers. The CPSC has documented over 200 cases of infant drownings in 5-gallon containers over the last eight years. (The findings clause in S. 799 refers to over 400.) Only one of those instances was shown to involve an industrial steel container, and the facts of that case are unusual to say the least. In short, the extensive data show clearly that the risk to children is not posed by steel containers.

III. THE DISTINCTION BETWEEN PLASTIC AND STEEL

We believe that the reasons for the lack of incidents involving steel 5-gallon containers is evident when one examines their physical characteristics and use patterns.

• *Steel Containers Are Not Typically Kept Around the Home After the Contents are Used.* Unlike plastic 5-gallon containers (which are used for diaper pails, mop buckets, car-washing, chamber pots, pet bath tubs, etc.), industrial steel 5-gallon buckets are neither easily reusable nor kept around the home. The physical features of the steel products and normal human nature explain why steel industrial contain-

[1] We estimate that plastic 5-gallon containers enjoy about 3-4 times greater market share.
[2] A list of the Coalition members is attached as Exhibit A.

ers represent less than 1 percent of the reported cases. People keep and reuse plastic buckets; people do not typically keep 5-gallon steel containers. Here's why:

• *Steel Containers Rust.* After even a brief exposure to moisture, steel containers begin to rust rendering them useless for home applications. Even if the rust does not reach the interior of the container, a rusty pail will create unsightly rings on any surface.

• *Steel Containers Typically Contain Materials Which Cannot be Totally Removed.* Steel buckets are particularly suitable for petroleum-based products such as driveway sealers, solvent-based paints and cements. Although plastic containers can also be used in many of these applications, it is much more difficult to clean out a steel container even if solvents or tools are used because of their two-piece construction—materials are often trapped in the crimping between the bottom and sides. After normal use there is a residue of these materials which is incompatible with further home use of the container.

IV. THE HISTORY OF THE INVESTIGATION OF 5-GALLON CONTAINERS

Over the last several years, the CPSC has compiled all available information on the dangers of drowning in 5-gallon containers. Its National Electronic Injury Surveillance System ("NEISS") reporting system capture percent hospital admissions, coroners reports, newspaper articles and other sources in characterizing accidents and deaths. In-depth investigations have also been conducted on most of these cases. Based on this comprehensive data, the CPSC, with the urging of Chairwoman Cardiss Collins and others, asked the ASTM to develop standards for the labeling of plastic containers, presumably because they agreed that steel containers did not pose a danger. For competitive reasons, the plastics industry has attempted to draw steel containers into the ASTM proceeding and other regulatory and legislative initiatives. Because of the major distinctions in the use patterns of steel and plastics containers, the ASTM Committee has been split into separate task forces to address the concerns.

V. A FAIR RESOLUTION TO THE PROBLEM: ANY LEGISLATION TO PROTECT CHILDREN SHOULD DISTINGUISH BETWEEN NON-REUSABLE STEEL AND THE OFTEN REUSABLE PLASTIC CONTAINERS

The Safe Steel Container Coalition urges the Senate to consider the epidemiological evidence and remove steel containers from the legislation.

EXHIBIT A—MEMBERS OF THE SAFE STEEL CONTAINER COALITION

Producers—Brockway-Standard, Inc.; Cleveland Steel Container Corporation; Prospect Industries, Inc.; and Southline Metal Products.

Users—AKZO Coatings; Gibson-Homans Company; Karnak Corporation; Monsey Products; and Technical Coatings,

Suppliers—U.S. Steel.

LETTER FROM JOSEPH GREENSHER, M.D., F.A.A.P.

JULY 12, 1993.

The Honorable RICHARD BRYAN,
U.S. Senate,
Washington, DC 20510

DEAR SENATOR BRYAN: Thank you for giving me the opportunity to testify on behalf of the Academy of Pediatrics at your July 1 hearing on the "Child Safety Protection Act" (S. 680).

I am writing to clarify a statement I made during the question-and-answer period at the hearing. At one point, you asked the witnesses' opinions about the importance of the triangular shape for the warning labels that would be required by S. 680. I responded that there is a great deal of expertise available on the size and color of warning labels, and that I think we should be concerned with the message that the label conveys rather than whether the label is triangular or rectangular. At the time. I thought your question was referring to the actual shape of the label itself. I later realized, however, that your question concerned the importance of the triangular icon that would be required as part of the warning label under S. 680.

To clarify my position (and that of the Academy), I do think that the size, shape, color, placement, contents, and language (e.g., English, Spanish) on the label are all important in determining how effectively the warning message is conveyed. And, of

course, the purpose of the label should be to convey the hazards of the product as clearly and conspicuously as possible.

As I mentioned in my response, there are people with greater expertise than I (or my fellow pediatricians) on how to make a warning label convey its message effectively. Thus, on behalf of the Academy, I recommend that we defer to these experts—especially the staff of the Consumer Product Safety Commission (CPSC), as well as the other witnesses on the panel.

As you know, the CPSC staff recommended that the triangular "warning" icon appear on the warning labels on toys with small parts, as reflected in your legislation. I defer to their expertise.

I would appreciate your including this letter in the official hearing record to clarify that the American Academy of Pediatrics believes that the triangular icon required by your legislation is important in conveying the hazard messages to parents and other care-takers.

On behalf of the Academy, I would like to thank you for your efforts to enhance the safety of children as they undertake the important play of childhood. Please let us know if we can be of any assistance as your legislation moves through Congress.

Sincerely,

JOSEPH GREENSHER,
M.D., F.A.A.P.

LETTER FROM TERRY G. LEE, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, BELL SPORTS, INC.

JUNE 29, 1993.

The Honorable RICHARD BRYAN,
U.S. Senate,
Washington, DC 20510

DEAR SENATOR BRYAN: On behalf of Bell Sports, Inc. I would like to express our support for the Child Safety Protection Act (S680) and the Children's Bicycle Helmet Act of 1993.

Bell has been in the helmet business for 38 years. We know from our experience, and the hundreds of letters we receive from consumers each year, that bicycle helmets have saved countless lives and have prevented serious and irreparable head injury.

As you know, the statistics on bicycle-related injuries to children have now been documented and they are compelling.

The enactment of these important pieces of legislation will help to reduce the many bike-related head injuries and deaths to young children in this country. Wearing a bicycle helmet is certainly one of the primary actions a cyclist takes to ride safely.

Bell has been a sponsor of the National SAFE KIDS Campaign, a childhood injury prevention program, for five years. In 1989, the National SAFE KIDS Campaign launched its bicycle helmet safety program and Bell became involved in this nationwide effort to create awareness of this preventable injury. We have also sponsored bicycle helmet programs with the National Head Injury Foundation and its states associates, as well as other grass roots efforts around the country.

Through support of non-profit organizations and through our own programs, Bell has been able to help educate children and parents about bicycle helmet safety by underwriting support for school-based programs, national television public service announcements, hospital and health-care professionals awareness programs, distribution of helmets to low-income children and discounted helmet programs through our network of 4,500 dealers.

We also feel that these bills have the potential to increase the quality of all bicycle helmets manufactured by requiring the Consumer Product Safety Commission to adopt and/or develop a mandatory safety standard. This will serve to upgrade the bicycle helmet industry as a whole, as well as to ensure that children will be adequately protected by the bicycle helmets they wear.

We will support your efforts for passage of this legislation and will encourage manufacturers, dealers, media and other influential members of the bicycle industry to do the same. We also pledge our continued support of non-profit organizations in their efforts to encourage bicycle safety for all children.

Sincerely,

TERRY G. LEE,
Chairman and Chief Executive Officer.

LETTER FROM HARRY F. PALMER, PRESIDENT, BALLOONS ARE EVERYWHERE, INC.

JULY 12,1993.

Ms. CLAUDIA SIMONS,
U.S. Senate,
Washington, DC 20510

DEAR MS. SIMONS: Thank you for talking with me on the telephone this afternoon. As a small business owner, I am concerned about The Child Safety Protection Act, S. 680. If passed, we could be faced with the burden of replacing or re-labeling our packaged balloons at tremendous cost, even though we have adopted the industry standard label voluntarily and at our own expense.

I believe the industry/ASTM label and the industry's public education efforts do more to increase safety than the label required by S. 680 without additional cost to the taxpayer.

In addition to having used labels voluntarily for several years, the industry has been taking steps to make them even more effective. For many months, industry representatives have been working with the American Society for Testing and Measurement (ASTM) to develop comprehensive new guidelines and uniform labels for all packages of latex balloons.

If the Senate decides that it must require labels, it should at least recognize the extensive work which has gone into the development of the industry/ASTM label and adopt it as the required label. By adopting the industry/ASTM label, the Senate will:

1. Avoid wasteful duplication of effort to develop a new label.
2. Avoid delay * * * the industry/ASTM label is available now.
3. Save taxpayers money—no additional development cost.
4. Save consumers money—packages that have been printed or labeled would not have to be discarded or re-labeled.

There is no evidence that either label will be more effective, but throwing money away by requiring new labels will not improve child safety. If child safety is the objective, please allow us the opportunity to continue the carefully developed combination of industry/ASTM labels and consumer education programs which have proven to be so effective to date.

If there is any information you need, please call me at your convenience. Thank you very much.

Sincerely yours,

HARRY F. PALMER,
President.

LETTER FROM TINA D. ELLIS, LOOMIS, CA

JULY 1, 1993.

Senator HOWARD METZENBAUM,
U.S. Senate,
Washington, DC 20510

SENATOR METZENBAUM: It has come to my attention that you are the author sponsoring SB 799 requiring warning labels to be placed on industrial sized containers. I would like to personally commend you on your efforts, and also for recognizing the necessity of such a requirement. I am a single mother from California, and almost two years ago lost my infant daughter to such an accident. As a result of my tragedy, I was contacted by the California State Firefighters Association, asking for my help regarding legislation that they would like my personal testimony on. I gladly offered any assistance that I could give, and at that time expressed my interest in legislation requiring warning labels to be placed on the buckets. At which point C.S.F.A. began the process of locating an author, and preparing the language for the bill. The next ten months went by in an action packed blur, beginning with an appearance on the nationally syndicated television show Good Morning America. At the end of this time period I had become quite comfortable with the whole process, having testified before several committees, and done approximately thirty local television interviews. To say nothing of the various newspapers and magazine articles. But in the long run it all paid off when our bill was signed and became a law for the state of California. However we were very well aware that this was not a problem solely in our state. It was very important that this be made a national standard, so that we could help to prevent this avoidable accident from needlessly happening.

Throughout our research regarding the placement of the labels we have come to realize that it would be beneficial to have two labels on the buckets, one in English, and also one in Spanish. For although the graphic chosen for the label is basically self explanatory, the statistics show that the Spanish population has also been affected by this tragedy, and an injustice would be done to them by eliminating their right to have a label also printed in their language. Another fact which must be looked at is the ink colors to be used on the labels, research statistics have shown the ANSI colors to be most effective, therefore these are the colors which I would tend to support since we obviously want these labels to be as noticeable as possible.

I firmly believe that it is imperative that this legislation be hurried through as quickly as possible, for in the meantime innocent babies are needlessly losing their lives. Unfortunately, the main reason that so many lives are lost to this type of accident is merely the fact that people don't associate the buckets with being a hazard * * * this is why time must not be wasted.

Thank you once again for taking on this bill, and also for the time you have taken to read my letter. I am certain that you will do everything possible in order to help with the successful passage of this bill. Should you have any questions, or need any help regarding this matter, feel free to contact me at any time. I am always available to give any type of assistance whether it is by telephone, or even to come and testify. Nothing is out of the question.

Sincerely yours,

MS. TINA D. ELLIS.

LETTER FROM PAMELA GILBERT, DIRECTOR, PUBLIC CITIZEN'S CONGRESS WATCH; MARY ELLEN FISE, PRODUCT SAFETY DIRECTOR, CONSUMER FEDERATION OF AMERICA; M. KRISTEN RAND, COUNSEL, CONSUMERS UNION; WILLIAM C. KAMELA, DIRECTOR OF PUBLIC POLICY, NATIONAL SAFE KIDS CAMPAIGN; AND EDMUND MIERZWINSKI, CONSUMER PROGRAM DIRECTOR, U.S. PUBLIC INTEREST RESEARCH GROUP

JULY 20, 1993.

The Honorable RICHARD BRYAN,
U.S. Senate,
Washington, DC 20510

DEAR SENATOR BRYAN: We appreciate your holding a hearing on S. 680 and S. 799 earlier this month and are writing to offer additional information to supplement the hearing record.

WARNINGS ON TOYS

S. 680 requires that toys intended for children who are at least three years old but not older than six that contain small parts bear warning labels communicating the choking hazard. Similarly this bill requires balloon packages to warn about the choking risks associated with balloons.

At the hearing there was discussion about the warning symbol required in the bill—an exclamation point inside a triangle—and whether this symbol or icon was already in use.

As we indicated in our testimony, the icon is a requirement of the American National Standards Institute's voluntary standard, Z-535. It is clear that this warning system has been widely adopted and we offer the following examples:

1) Welch's Sparkling Grape Soda; uses warning symbol twice on its product label (see Attachment A)

2) Ride-On Lawn Mowers; ANSI/OPEI B171.5-1990 (see Attachment B)

3) Non-Powder Guns (BB guns): ASTM Standard Consumer Safety Specification for Non-Powder Guns; F589-92 (see Attachment C)

4) File Cabinets; HON file cabinet P/N 0-3124 (see Attachment D)

5) Golf Carts; E-Z Go Golf Cart—contains warning usingtriangle with exclamation point on the front dash; gives warnings about operation and states that failure to comply with warnings could result in serious personal injury.

6) Safety Alert Symbol for Agricultural Construction and Industrial Equipment—SAE J284 JAN91 (Society of Automotive Engineers)(see Attachment E)

7) Safety Signs—SAE J115 JAN87 (see Attachment F)

8) Safety Signs—ASAE 5441 (American Society of Agricultural Engineering) (see Attachment G)

9) Safety Alert Symbol for Agricultural Equipment—ANSI/ASAE S350 OCT92 (see Attachment H)

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10) Farm Safety for Just Kids, an advocacy group aimed at reducing children's injuries and deaths on farms has widely adopted the icon in their adhesive warning stickers for placement on farm equipment to warn children of the dangers of playing on or near equipment and grain. See Attachment I; seven different stickers.

We believe that further use of this warning icon will enable consumers to recognize and appreciate dangers associated with the products they use and, therefore, should not be deleted from your bill.

SIZE OF SMALL BALLS INTENDED FOR CHILDREN UNDER AGE 3

S. 680 requires that balls intended for children under age 3 be 1.75 inches in diameter. At the hearing there was discussion regarding this particular size dimension. Our organizations strongly support a 1.75 inch diameter because, according to CPSC data, this is the largest size ball known to have choked a child.

At least 45 children have choked and died on balls; 40 children died between January 1980 and July 1991; five children choked and died on balls between March 1973 and March 1977. Additionally, a CPSC Health Sciences study identified 11 nonfatal acute choking incidents on balls. These additional 11 cases were those which could have resulted in death, had an observer not removed the object from the child's mouth/throat. It is important to note that these 11 incidents constituted a sample of non-fatal incidents; they do not represent all of the non-fatal incidents on balls but rather were those selected for study by CPSC Health Sciences staff.

Specifically, in cases where CPSC was able to learn the size of the ball, the data show that one 11-month old child choked, but did not die, on a ball 1.75 inches in diameter. This case was classified by CPSC staff as one that would have resulted in death if an observer had not removed the ball from the child's mouth/throat. A child older than three choked and died on a ball 1.73 inches in diameter. In the ball-related deaths that occurred between 1980 and 1991, 65 percent were to children under age three.

In summary, we know that at this age children routinely put balls in their mouths and that a ball as large as 1.75 inches has choked a child in this age group. Therefore, it would be unfortunate and dangerous, in our opinion, to ignore this risk to babies and choose a lesser diameter.

Thank you very much for your attention to this additional information. Our organizations look forward to working with you and your staff to obtain passage of S. 680.

Sincerely,

PAMELA GILBERT,
Director, Public Citizen's Congress Watch.
MARY ELLEN FISE,
Product Safety Director, Consumer Federation of America.
M. KRISTEN RAND,
Counsel, Consumers Union.
WILLIAM C. KAMELA,
Director of Public Policy, National SAFE KIDS Campaign.
EDMUND MIERZWINSKI,
Consumer Program Director, U.S. Public Interest Research Group.

[Attachments A–I may be found in the committee's files.]

LETTER FROM JACQUELINE JONES-SMITH, CONSUMER PRODUCT SAFETY COMMISSION

JUNE 30, 1993.

The Honorable RICHARD BRYAN,
U.S. Senate,
Washington, DC 20510

DEAR MR. CHAIRMAN: In view of your subcommittee's hearing scheduled for July 1, on S. 680, the "Child Safety Protection Act," I request, in behalf of the Commission, that this letter be made a part of the record.

While recognizing that Congress can enact legislation on small parts labeling and bicycle helmet standards, as contained in this bill, without the factual findings necessary for Commission rulemaking on such issues, we would simply make reference

to the Commission statements of March 18, 1992, on the small parts issue and the Commission statements of July 31, 1991, on the bicycle helmet issue (enclosed). Similarly, our Federal Register note of February 11, 1993, more fully sets forth the commission's rationale for terminating rulemaking on the small parts labeling proposal that had been before the Commission under current law.

The Commission deeply appreciates the subcommittee's firm commitment to all consumer product safety issues and, specifically, to the safety issues designed to provide added protection to children, who are our most vulnerable population. However, because the Commission found no evidence that labeling, as currently at issue, would save lives and also found the current voluntary standards for bicycle helmets to be satisfactory, we are still concerned about the legislation. First, it negates the Commission's goal of risk-based decision making, whereby the most grievous problems receive the most attention and resources of the Commission.

Second, and as an adjunct of the first concern cited above, and despite the streamlined process for rulemaking and standard setting provided in the bill, the costs of developing the labeling rule and the helmet standard and, perhaps more importantly, the costs of enforcement will require shifting of resources and Commission efforts from other projects unless additional monies are provided to support these new activities. Our estimates indicate that the provisions of S. 680 would require CPSC to spend more than three-quarters of a million dollars during the two years following enactment for rulemaking and enforcement associated with toy labeling and bicycle helmets. The toy labeling expenditures are estimated to be in excess of $350,000 and those associated with bicycle helmets are estimated to be in excess of $400,000 during the two year period. Such sums are major expenditures for this agency, particularly when we have no findings that support the need.

We ask that in the subcommittee deliberations, the resource implications on the Commission be fully considered as this legislation is reviewed.

Thank you for your continuing leadership and strong support of this agency and for the mission it serves.

With kindest regards.

Sincerely,

JACQUELINE JONES-SMITH.

[Miscellaneous enclosures may be found in the committee's files.]

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